United Nations A/65/281

General Assembly

Distr.: General
11 August 2010

Original: English

Sixty-fifth session
Item 69 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

The right to food

Note by the Secretary-General

The Secretary-General has the honour to transmit to the Members of the General Assembly the interim report of the Special Rapporteur on the right to food, Olivier De Schutter, submitted in accordance with General Assembly resolution 64/159.

* A/65/150.

10-48230 (E) 150910

Please recycle

Report of the Special Rapporteur on the right to food

Summary

Access to land and security of tenure are essential for the enjoyment of the right to food. The present report explores the threats posed by the increasing pressures on land and on three categories of land users: indigenous peoples, smallholders and special groups such as herders, pastoralists and fisherfolk. It explores how States and the international community could better respect, protect and fulfil the right to food by giving increased recognition to land as a human right.

The report argues that, while security of tenure is indeed crucial, individual titling and the creation of a market for land rights may not be the most appropriate means to achieve it. Instead, the report suggests, the strengthening of customary land tenure systems and the reinforcement of tenancy laws could significantly improve the protection of land users. Drawing on the lessons learned from decades of agrarian reform, the report emphasizes the importance of land redistribution for the realization of the right to food. It also argues that development models that do not lead to evictions, disruptive shifts in land rights and increased land concentration should be prioritized.

Contents

		Page
I.	Introduction	3
II.	Existing pressures on land	5
III.	Protection of land users	7
	A. Indigenous people	7
	B. Smallholders cultivating land	9
	C. Herders, pastoralists and fisherfolk	13
IV.	Agrarian reform	14
	A. Why agrarian reform?	14
	B. Contribution of land reform to the realization of the right to adequate food	17
V.	Recommendations	19

I. Introduction

1. One billion people are hungry today.[1] For the vast majority — smallholders or agricultural workers, herders, artisanal fisherfolk and members of indigenous communities — access to land is a condition for the achievement of a decent standard of living.[2] The reason why approximately 500 million people depending on small-scale agriculture are hungry is not only that the price they receive for their crops is too low and they are less competitive than larger production units, but also that they cultivate plots that are often very small — which makes the vast majority of them net food buyers — and they are often relegated to soils that are arid, hilly or without irrigation as they compete against larger productive units for access to land and water. Whether because small-scale farming has become non-viable or because they have been expelled from the land in the absence of effective security of tenure, many such farmers become agricultural workers on large-scale plantations, where they are often paid lower than subsistence wages and left without social or legal protection. Artisanal fisherfolk pastoralists and agro-pastoralists now face a similar threat: as land becomes scarcer, they increasingly risk being excluded from the fishing and grazing grounds on which they have been able to rely for generations. And the precarious position of indigenous peoples and forest-dwelling populations may be attributed in particular to the increased pressure on the forests on which they depend for their livelihoods.

2. Access to land is thus closely related to the right to adequate food, as recognized under article 25 of the Universal Declaration of Human Rights[3] and article 11 of the International Covenant on Economic, Social and Cultural Rights.[4] The right to food requires that each individual, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement.[5] States may be under an obligation to provide food where "an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal".[6] Primarily, however, the right to food requires that States refrain from taking measures that may deprive individuals of access to productive resources on which they depend when they produce food for themselves (the obligation to respect), that they protect such access from encroachment by other private parties (the obligation to protect) and that they seek to strengthen people's access to and utilization of resources and means to ensure their livelihoods, including food security (the obligation to fulfil).[7]

3. For some of the groups that are the most vulnerable today, this means protecting existing access to land, water, grazing or fishing grounds, or forests, all of which may be productive resources essential for a decent livelihood. In such cases, as detailed below, the right to food may complement the protection of the

[1] Food and Agriculture Organization of the United Nations (FAO), *The State of Food Insecurity in the World: Economic Crises — Impacts and Lessons Learned*, (2009), p. 11.

[2] United Nations Millennium Project, *Halving Hunger: It Can Be Done: Summary Version* (United Nations Development Programme (UNDP), 2005), p. 6.

[3] General Assembly resolution 217 A (III).

[4] See General Assembly resolution 2200 A (XXI), annex.

[5] E/C.12/1999/5, para. 6.

[6] Ibid., para. 15.

[7] Ibid., para. 15.

right to property[8] or of indigenous peoples' relationship with their lands, territories, and resources. In other cases, because landlessness is a cause of particular vulnerability,[9] the obligation of the State goes further: it is to strengthen such access or make it possible — for example, through redistributive programmes that may in turn result in restrictions on others' right to property. This obligation of States is especially clear in cases in which the members of such groups have no alternative means of producing food or gaining sufficient income to purchase food that is sufficient, adequate and culturally acceptable.[10]

4. Access to land and security of tenure are essential to ensure the enjoyment of not only the right to food, but also other human rights, including the right to work (for landless peasants) and the right to housing. This fact led the former Special Rapporteur on the right to adequate housing to conclude that the Human Rights Council should "ensure the recognition in international human rights law of land as a human right".[11] The present report confirms that conclusion, while taking the right to food as its departure point. It describes the increasing pressures on land. It then discusses the right of land users to be protected in terms of their existing access to natural resources, particularly land. It also argues in favour of ensuring more equitable access to land.

5. The conclusions presented in the present report are based on civil society consultations held in Bamako from 8 to 10 December 2009, in Kuala Lumpur on 23 and 24 March 2010, and in Chennai, India, on 28 and 29 March 2010. They also result from the analysis of 117 cases sent to the Special Rapporteur by non-governmental organizations following a public appeal made by the Special Rapporteur on 15 December 2009. The Special Rapporteur expresses his deep gratitude to the Governments that responded to a questionnaire sent on 4 March 2010, including Albania, Belarus, Bolivia (Plurinational State of), Bosnia and Herzegovina, Brazil, Cameroon, Canada, Colombia, Georgia, Germany, Guyana, Jordan, Kazakhstan, Malawi, Mexico, Montenegro, Norway, Oman, Peru, the Republic of Moldova, Saudi Arabia, the Syrian Arab Republic, Switzerland, Turkmenistan, the United Kingdom of Great Britain and Northern Ireland, and Uruguay. The Special Rapporteur also benefited from expert briefs prepared at his request.[12] Finally, the report takes into account a lesson that can be drawn from the communications sent to Governments or non-governmental entities by the Special Rapporteur and his predecessor: during the period from 2003 to 2009, as an indication of the importance of the issue of land with respect to the right to food, 115 of the 183 communications sent by the mandate-holders concerned rights related to the use of land and the right to food.

---

[8] Christophe Golay and Ioana Cismas, *Legal Opinion on the Right to Property from a Human Rights Perspective* (Rights & Democracy and Geneva Academy of International Humanitarian Law and Human Rights, 2010).

[9] E/C.12/1999/5, para. 13.

[10] Lorenzo Cotula et al., *The Right to Food and Access to Natural Resources: Using Human Rights Arguments and Mechanisms to Improve Resource Access for the Rural Poor* (FAO, 2008), pp. 23 and 59.

[11] A/HRC/4/18, para. 31.

[12] The Special Rapporteur gratefully acknowledges the contributions of the Leitner Centre for International Law and Justice, Fordham University School of Law; the Human Rights Clinic, Columbia Law School; the International Human Rights Clinic, New York University School of Law; and the Environmental Law Clinic, Columbia Law School.

II. Existing pressures on land

6. The pressures on land are increasing dramatically. As rural populations grow, plots cultivated are becoming smaller per capita and per household. In India, the average landholding size fell from 2.6 hectares in 1960 to 1.4 hectares in 2000 and continues to decline; similar evolutions have been documented in Bangladesh, the Philippines and Thailand, where the decline in the average farm size is combined with an increase in landlessness.[13] The trend is not limited to the Asian region. In Eastern and Southern Africa, the amount of cultivated land per capita declined by half over the past generation, and in a number of countries the average cultivated area now amounts to less than 0.3 hectares per capita.[14] This phenomenon is compounded by erosion and soil depletion: worldwide, 5 million to 10 million hectares of agricultural land are being lost annually to severe degradation.[15] And it would be difficult to expand the areas under cultivation to the degree required to accommodate the growth of rural populations, since forests have a major role in storing carbon and deforestation is already a major contributor to greenhouse gas emissions.[16]

7. These long-term trends have been exacerbated in recent years by policies that have further increased the pressures on farmland. In many regions, under export-driven agricultural policies, large-scale plantations have developed for the production of food, energy or cash crops. While the tendency towards land concentration has resulted primarily from a dominant model of agricultural development that rewards the most mechanized and capital-intensive farms, it has also been encouraged by the expansion of long supply chains. This has generally favoured large agricultural producers, which are better connected to markets and can more easily produce the volumes and meet the standards required for export. The competition among various uses of farmland has recently been increased by policies favouring the switch to biofuels in transport, which leads to competing resource claims on the part of local resource users, Governments and incoming agrofuel producers, creating the risk that poorer groups will lose access to the land on which they depend.[17] A recent inventory by the World Bank listing 389 large-scale acquisitions or long-term leases of land in 80 countries shows that, while 37 per cent of the so-called investment projects are intended to produce food (crops and livestock), agrofuels represent 35 per cent of such projects.[18] For all these reasons, the Special Rapporteur has insisted that investments implying a shift in land rights should be treated with great caution.[19] At the thirty-sixth session of the Committee on World Food Security, he will detail both the risks of large-scale land investments and possible alternative business models.

---

[13] World Bank, *World Development Report 2008: Agriculture for Development* (2007), pp. 118-119.

[14] International Fund for Agricultural Development, *Improving Access to Land and Tenure Security*, EB 2008/94/R.2 (2008), p. 7.

[15] Ibid.

[16] Intergovernmental Panel on Climate Change, *Climate Change 2007: Synthesis Report* (2007). It is estimated that forests store 45 per cent of terrestrial carbon.

[17] See A/HRC/9/23, paras. 25-34 and annex II.

[18] At the time of reporting, this study had not been made public. The figures are from presentations made by the World Bank, most recently at its spring meetings with the International Monetary Fund held in Washington, D.C., on 24 and 25 April 2010.

[19] A/HRC/13/33/Add.2.

8. Measures adopted with a view to climate change mitigation or environmental conservation, which have placed priority on technological and market-based solutions over the deconcentration of land in order to encourage more sustainable land uses, have created further conflicts with the rights of land users. Under the clean development mechanism provided for in article 12 of the Kyoto Protocol to the United Nations Framework Convention on Climate Change,[20] annex I (industrialized) countries that have committed to reducing greenhouse gas emissions receive additional emission credits if they help to implement emissions-reducing projects in developing countries. However, the planting of forests in order to benefit from the mechanism may result in evictions, against which the local populations concerned may be insufficiently protected. The REDD (Reducing Emissions from Deforestation and Forest Degradation) scheme, launched in 2005 and strengthened at the 13th Conference of the Parties to the United Nations Framework Convention on Climate Change, convened in Bali in December 2007,[21] may represent a threat to forest dwellers, whose customary rights over the forests on which they depend for their livelihoods are not widely recognized, if the State or other actors are tempted to appropriate the benefits derived from carbon sequestration. Governments are also working to protect natural environments by creating wildlife reserves, national parks and other protected areas. Ecosystems perform vital services for agriculture, including support of the soil structure and soil retention, nutrient cycling, dung burial and pest control, pollination, water provision and purification, biodiversity and atmospheric regulation.[22] However, the implementation of conservation measures, including land-use planning, should take into account the right to food of people who depend on the land for their livelihoods.

9. Industrial uses of land and urbanization have also increased in recent years, further heightening the competition: 19.5 million hectares of farmland are converted annually into land for industrial and real estate development.[23] Researchers have documented cases in which farmers' lands have been expropriated for mining projects or for the building of industrial plants, in conditions amounting to forced eviction with no or insufficient compensation.[24] In certain regions, the expansion of industrial areas has taken the form of the establishment of special economic zones aimed at creating conditions favourable for the arrival of foreign investors.[25] Large infrastructure projects such as dams and highways have also had an important impact, and a significant proportion of the communications sent to Governments by the Special Rapporteur during the period from 2003 to 2009 relates to evictions for such projects.

---

[20] United Nations, *Treaty Series*, vol. 2303, No. 30822.

[21] See David J. Kelly, "The case for social safeguards in a post-2012 agreement on REDD", *Law Environment and Development Journal* (2010), p. 61; Tom Griffiths, *Seeing "RED"? "Avoided Deforestation" and the Rights of Indigenous Peoples and Local Communities* (Forest Peoples Programme, 2007); and Simone Lovera, *The Hottest REDD Issues: Rights, Equity, Development, Deforestation and Governance by Indigenous Peoples and Local Communities* (Global Forest Coalition, 2008).

[22] Wei Zhang et al., "Ecosystem services and dis-services to agriculture", *Ecological Economics*, vol. 64, No. 2 (2007), pp. 253-260.

[23] FAO, Land Policy and Planning web pages, http://www.fao.org/nr/land/land-policy-and-planning/en/.

[24] See Malcolm Langford and Ujjaini Halim, "Expropriation and eviction: grassroots and human rights perspectives on compulsory acquisition", Global Land Tool Network working paper (2007).

[25] See Wei Ge, "Special economic zones and the opening of the Chinese economy: some lessons for economic liberalization", *World Development*, vol. 27, No. 7 (1999), pp. 1267-1285.

III. Protection of land users

10. The pressures referred to above exacerbate conflicts over land and lead to a worrisome criminalization of social movements aimed at carrying out agrarian reforms "from below", including by claiming land that is unused and, in their view, should be distributed more equitably. As a result, serious violations of a range of human rights occur, including murders of peasants connected to such activities, which the Special Rapporteur has documented in a number of communications to States. But the increased pressures on land are also a source of concern because of the weak protection of those who depend most on the land for their survival: smallholders, traditional fisherfolk, pastoralists and peoples (including indigenous and tribal peoples) that rely on the products of the forest. The present report first addresses the situation of indigenous peoples, which is specific insofar as the right of such peoples to have their lands demarcated and protected is recognized under international law. It then considers the position of smallholders, who cultivate the land in conditions that are often insufficiently secure, and that of other land users, such as fisherfolk, pastoralists and herders, who are particularly dependent on commons. The key message is that, while security of tenure is important and should be seen as crucial to the realization of the right to food, individual titling and the creation of a market for land rights may not be the most appropriate means to achieve it.

A. Indigenous peoples

11. Indigenous peoples are increasingly victims of the exploitation of natural resources on their lands, which are often regarded as belonging to the State. The demarcation of their lands and territories is a lengthy process that includes many obstacles. Participation is generally lacking. Yet, International Labour Organization (ILO) Convention No. 169, concerning indigenous and tribal peoples in independent countries, which entered into force in 1991, provides for a number of guarantees related to land. Although the Convention has been insufficiently ratified,[26] that has been compensated for in part through the adoption on 13 September 2007 by the General Assembly, in its resolution 61/295, of the Declaration on the Rights of Indigenous Peoples, which contributes to the formation of international customary law on this issue.[27] The Declaration provides, in its article 8 (2) (b), that States should prohibit "any action which has the aim or effect of dispossessing [indigenous peoples] of their lands, territories or resources", a requirement that replicates article 18 of ILO Convention No. 169. It also prohibits, in its article 10, any forcible removal of indigenous peoples from their lands or territories, imposing the requirements of free, prior and informed consent, agreement on just and fair compensation and, where possible, the option of return (for relocations).

12. In addition, the right of all peoples to freely dispose of their natural wealth and resources — as provided for in article 1 of the International Covenant on Economic, Social and Cultural Rights of 16 December 1966 and in article 1 of the International Covenant on Civil and Political Rights of 16 December 1966[28] — entails the

[26] Only 20 States had ratified the Convention at the time of reporting.

[27] General Assembly resolution 61/295, annex.

[28] See General Assembly resolution 2200 A (XXI), annex. See also Human Rights Committee, *Apirana Mahuika et al. v. New Zealand* (Communication No. 547/1993, CCPR/C/70/D/547/1993, 2000), para. 9.7.

protection of indigenous peoples from certain forms of dispossession from their territories or from the resources on which they depend. Article 5 (d) (v) of the International Convention on the Elimination of All Forms of Racial Discrimination also protects the right of indigenous communities to their lands.[29] And the right of indigenous peoples to the official recognition and registration of their territories has been affirmed under relevant regional human rights instruments. The Inter-American Court of Human Rights and the African Commission on Human and Peoples' Rights consider that indigenous people's traditional possession of their lands has effects equivalent to those of a State-granted full property title: therefore, where members of indigenous peoples have unwillingly lost possession of their lands after a lawful transfer to innocent third parties, they are entitled to the restitution thereof or to obtain other lands of equal extension and quality.[30] The right of indigenous communities to their lands includes the right to the natural resources contained therein.[31] Property, as protected under article 21 of the American Convention on Human Rights, is considered to constitute a collective right of indigenous people, since land ownership is often centred not on the individual, but rather on the group and its community.[32] Thus, States may have to recognize the customary systems of land tenure that protect communal property rights — for example, by giving the community a right to veto the alienation of its land by one of its constituent members, whether an individual or a clan, village or tribe.

13. International human rights law protects the relationship of indigenous communities with their lands, territories and resources by requiring States to demarcate such land, protect it from encroachment and respect the right of the communities concerned to manage it according to their internal modes of organization. Although sometimes those guarantees seem to be honoured more in the breach than in the observance, case law shows that use rights derived from customary tenure can be recognized and protected by the legal system; it also shows that the right to communal property — a right of the community rather than of the individual — is an alternative to individual property rights. On both counts, it can serve as a source of inspiration, in order to enhance the protection of the rights of other users of natural resources.

---

[29] See CERD/C/GUY/CO/14 (Guyana) and CERD/C/KHM/CO/8-13 (Cambodia).

[30] Inter-American Court of Human Rights, *Sawhoyamaxa Indigenous Community v. Paraguay* (judgement of 29 March 2006), para. 128; African Commission on Human and Peoples' Rights, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya* (Communication No. 276/2003, 2009), para. 209; Inter-American Court of Human Rights, *Mayagna (Sumo) Indigenous Community of Awas Tingni v. Nicaragua* (judgement of 31 August 2001), paras. 151 and 164.

[31] African Commission on Human and Peoples' Rights, *The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v. Nigeria* (Communication 155/96, 2001), paras. 42, 54 and 55.

[32] Inter-American Court of Human Rights, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (judgement of 31 August 2001), para. 148; *Sawhoyamaxa Indigenous Community v. Paraguay* (judgement of 29 March 2006), para. 120. This view is shared by domestic courts: see Supreme Court of Canada, *Delgamuukw v. British Columbia* (judgement of 11 December 1997), paras. 194, 199 and 201; Constitutional Court of South Africa, *Alexkor Ltd and Another v. Richtersveld Community and Others* (judgement of 14 October 2003), para. 62.

B. Smallholders cultivating land

14. Access to land and security of tenure are also essential for the ability of smallholders to achieve a decent standard of living. As noted above, the right to food imposes on States an obligation not to deprive individuals of access to the productive resources on which they depend. Where a community has settled on a piece of land and depends on that land for its livelihood, the obligation to respect the right to food thus requires that eviction of the community from that land be prohibited unless certain conditions are fulfilled. No eviction should take place that does not meet the criteria set out by the Committee on Economic, Social and Cultural Rights in its general comment No. 7, on the right to adequate housing: forced evictions,[33] and in the Basic Principles and Guidelines on Development-Based Evictions and Displacement.[34] Those guidelines provide a practical tool to assist States and agencies in developing policies, legislation, procedures and preventive measures to ensure that forced evictions do not take place or, should prevention fail, to provide effective remedies to those whose human rights have been violated.

15. Under the right to property, land users are also protected from evictions in certain circumstances, as stipulated in article 17 of the Universal Declaration of Human Rights, article 14 of the African Charter on Human and Peoples' Rights, article 1 of the First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, and article 21 of the American Convention on Human Rights. While the conditions under which eviction may take place vary from instrument to instrument, the most common requirements are the following: an eviction must have a valid (or legitimate) public purpose (a condition that should exclude eviction to serve purely private interests); it must not be discriminatory; it must meet the requirements of due process; and it must be accompanied by fair compensation. Although this protection from arbitrary expropriation does not in principle extend to all forms of illegal occupation,[35] it generally extends to forms of land occupation that are not formally recognized through a legal title ("extra-legal") or that are based only on customary tenure.

16. It has been argued that improving security of tenure encourages smallholders to invest in the land,[36] and in principle it could lower the cost of credit by increasing the use of land as collateral. It could also encourage more sustainable farming, particularly through the planting of trees and through more responsible use of the soil and water resources. The real question, however, is not whether security of tenure should be improved, but how. The classical approach has consisted of individual titling, combined with the establishment of cadastres, or land registries, to facilitate and secure transactions related to land. That approach is linked to the

[33] E/1998/22-E/C.12/1997/10, annex IV.

[34] A/HRC/4/18, annex I.

[35] However, even where a person has established him- or herself illegally on a given area, he or she may, depending on the context and, in particular, on the alternatives available, be protected from forcible removal: see Constitutional Court of South Africa, *Government of the Republic of South Africa and Others v. Grootboom and Others* (judgement of 4 October 2000) and European Court of Human Rights, *Öneryildiz v. Turkey* (judgement of 30 November 2004).

[36] Klaus Deininger, *Land Policies for Growth and Poverty Reduction* (World Bank, 2003), pp. 115-116; Klaus Deininger and Songqing Jin, "Tenure security and land-related investment: evidence from Ethiopia", *European Economic Review*, vol. 50(5) (2006), pp. 1245-1277; World Bank, *World Development Report 2008*, p. 138.

idea that security of tenure is primarily a means to promote integration into the market: once property has been legally recognized, it can be alienated or mortgaged so that the beneficiaries can leave agriculture or obtain cash to make the necessary investments in the land. In the late 1970s and throughout the 1980s — and more recently, under the influence of the writings of Hernando de Soto,[37] international financial institutions promoted land registration and titling as part of their structural adjustment programmes, in the hope that successful land markets would ensure efficient land allocation and spur economic growth, which in turn was seen as the key to addressing rural poverty and food insecurity.[38]

17. The effort to transplant the Western concept of property rights has created a number of problems, however. Unless it is transparent and carefully monitored, the titling process itself may be appropriated by local elites or foreign investors, with the complicity of corrupt officials. In addition, if it is based on the recognition of formal ownership, rather than on land users' rights, the titling process may confirm the unequal distribution of land, resulting in practice in a counter-agrarian reform. In particular, this will be the case in countries in which a small landed elite owns most of the available land, having benefited from the unequal agrarian structure of the colonial era. There is also a risk that titling will favour men. Any measures aimed at improving security of tenure should instead seek to correct existing imbalances, as the Land Management and Administration Project in Cambodia does.

18. Individual titling can also become a source of conflict and legal insecurity if it conflicts with customary rules regarding tenure, for example, as regards communal land ownership. Indeed, individual titling, combined with the marketability of land, may not be compatible with the recognization of customary forms of tenure with respect to communal land and common property resources, putting groups that do not use the land intensively or do not occupy it permanently at a particular disadvantage.

19. Finally, the creation of a market for land rights may itself have a series of undesirable consequences. The primary justification for the establishment of such a market is that it facilitates the reallocation of land towards more efficient users, thus providing an exit route from agriculture for rural residents for whom farming is not sufficiently profitable. Accordingly, the World Bank notes, "secure and unambiguous property rights ... allow markets to transfer land to more productive uses and users".[39] However, the impact of titling on farm productivity has often been unclear when it has not been complemented by schemes providing producers with appropriate levels of support.[40] Land sales tend to favour not those who can make the most efficient use of land, but those who have access to capital and whose ability to purchase land is greatest.[41] In fact, the creation of a land rights market can

---

[37] Hernando de Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (Basic Books, 2000).

[38] Manpreet Sethi, "Land reform in India: issues and challenges", in *Promised Land: Competing Visions of Agrarian Reform* (Food First Books, 2006), p. 77.

[39] World Bank, *World Development Report 2008*, p. 138.

[40] See Frank Place and S. E. Migot-Adholla, "The economic effects of land registration on smallholder farms in Kenya: evidence from Nyeri and Kakamega districts", *Land Economics*, vol. 74, No. 3 (1998), pp. 360-373.

[41] Celestine Nyamu Musembi, "De Soto and land relations in Africa: breathing life into dead theories about property rights", in *Market-Led Agrarian Reform: Critical Perspectives on Neoliberal Land Policies and the Rural Poor*, Saturnino M. Borras Jr. et al., eds. (Routledge, 2008).

cause land to be taken out of production in order to be held as an investment by speculators, resulting both in decreased productivity and in increased landlessness among the rural poor.[42] The poorest farmers could easily be induced to sell land and then be "priced out", particularly if they have fallen into debt as a result of a bad harvest or other circumstances. Thus, considered in isolation from other policies, individual titling may have counterproductive effects, increasing the vulnerability of the poor.[43] Indeed, the idea that individual titling contributes to poverty reduction as land is transformed into capital[44] presupposes that property is transformed into collateral, collateral into credit and credit into income.[45] However, the poor, for whom land is an essential social safety net where no others are available, may in fact be reluctant to mortgage their land in order to gain access to credit. Nor does titling necessarily result in significantly greater access to the credit offered by private financial institutions.

20. Individual titling appears to matter less to the poor than security of tenure, reflecting the fact that "[a]t low levels of income and in the absence of other social security mechanisms, land serves as a social safety net for the rural poor and provides them their basic means of livelihood".[46] In other words, while security of land tenure and recognition of land rights may correspond to strong demand, as illustrated by a number of country experiences, the same cannot be said of individual titling and the alienability of land. On the contrary, the limiting of land sales can protect smallholders from pressure to cede their land; it can also protect use rights regarding communal land and preserve communal forms of land management.[47] There is growing experience with the use of low-cost, accessible tools for recording local land rights, or at least land transactions, to ensure security of tenure through the recognition of use rights rather than full ownership. Examples include the "Plan foncier rural", implemented in Benin and tested in Burkina Faso, and the $1 registration process leading to the issuance of certificates in some Ethiopian states. An interesting illustration of the decentralized management of land rights is Law 2005-019 of Madagascar, setting forth the status of land.[48]

21. This indicates a fundamental opposition between two concepts of security of tenure; one oriented towards promoting land marketability through titling, and the other oriented towards broadening the entitlements of the relevant groups in order to ensure more secure livelihoods.

22. A number of countries, particularly in Africa, have extended formal legal recognition to existing customary rights, including collective rights, as an alternative to individual titling. Typically, neither individual members of households nor communities, through their representatives, can dispose of their land, for

---

[42] See Rebeca Leonard and Kingkorn Narintarakul Na Ayutthaya, "Thailand's land titling programme: securing land for the poor?", pp. 139-141.

[43] Ana Palacio, *Legal Empowerment of the Poor: An Action Agenda for the World Bank* (2006), p. 18.

[44] See De Soto, *The Mystery of Capital*.

[45] Christopher Woodruff, "Review of De Soto's *The Mystery of Capital*", *Journal of Economic Literature*, vol. 39 (2001), p. 1218.

[46] Palacio, *Legal Empowerment of the Poor*, p. 16.

[47] John W. Bruce et al., *Land Law Reform: Achieving Development Policy Objectives* (World Bank, 2008), pp. 126-128.

[48] André Teyssier, *Perspective No. 4 — Decentralising Land Management: The Experience of Madagascar* (CIRAD, 2010).

example, by selling it. Yet, the formal legal recognition of customary rights provides effective security. It favours long-term investments in the land. It may also facilitate access to credit, since creditors (although they will not be able to take possession of the land in the event of default) can be assured of the long-term viability of the investments that they help to finance. And it allows for the emergence of rental markets, which can improve access to land, particularly for land-scarce and labour-abundant households with little education.[49] At the same time, there is a high risk that traditional, patriarchal forms of land distribution will be further legitimized through the recognition of customary forms of tenure, in violation of women's rights. Such risks should be addressed through the inclusion of strict safeguards in the process of such recognition.

23. As customary forms of tenure are recognized, the relationship between individual and communal rights may vary. For instance, communal land rights may be formalized as an aggregation of individual rights. In Cambodia, although land may be held by indigenous communities as a whole, the 2001 Land Law allows individual community members to leave and receive their share of communal land, subject to the agreement of the entire community.[50] Another approach is to allow local community authorities to administer rights.[51] In Latin American States where indigenous groups have been granted both political rights and land rights, such groups have been able to achieve a degree of autonomy over land management, while gaining tenure security.[52]

24. True legal empowerment of the poor, then, should be seen as including the following: (a) a protection from eviction; (b) the provision of tools (legal aid, legal literacy training, paralegals) to ensure that formally recognized rights can be effectively defended;[53] (c) support for land users in their utilization of the land; and (d) strengthening of the capacity of land administrations and efforts to combat corruption in those administrations. Individual titling schemes should be encouraged only where they can be combined with the codification of users' rights based on custom, and where the conditions have been created to ensure that the establishment of a land rights market will not lead to further land concentration. Customary forms of tenure, which are often perceived as highly legitimate,[54] should be recognized although it is important that such systems be carefully scrutinized and, if necessary, amended, to bring them into line with women's rights, the use rights of those who depend on commons and the rights of the most vulnerable members of the community.

---

[49] See Klaus Deininger et al., "Efficiency and equity impacts of rural land market restrictions: evidence from India", *World Bank Policy Research Working Paper Series* 3013 (2006).

[50] Centre on Housing Rights and Evictions, "Untitled: Tenure insecurity and inequality in the Cambodian land sector" (2009).

[51] Klaus Deininger, "Land policies for growth and poverty reduction: key issues and challenges ahead" (2004).

[52] Ruth Meinzen-Dick et al., "Decentralization, pro-poor land policies and democratic governance", CAPRi Working Paper No. 80 (2008), p. 20.

[53] Lorenzo Cotula and Paul Mathieu, eds., *Legal Empowerment in Practice: Using Legal Tools to Secure Land Rights in Africa* (FAO and International Institute for Environment and Development, 2008).

[54] African Union, Economic Commission for Africa and African Development Bank, *Land Policy in Africa: A Framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihoods* (2009), para. 3.1.3.

C. Herders, pastoralists and fisherfolk

25. The protection of land-users' rights should not be limited to improving farmers' security of tenure. Fisherfolk need access to fishing grounds and may be severely affected by the fencing-off of land that provides access to the sea or to rivers. Pastoralists need grazing grounds for the animals that they raise. For these groups, as well as those practicing itinerant forms of agriculture, the formalization of property rights and the establishment of land registries may be the problem, not the solution: it may cause them to be fenced off from the resources on which they depend, making them victims of the vast enclosure movement that may result from titling.[55] In Kenya, pastoralists whose rights were ignored in the formalization process have reportedly been the victims of violent land-grabbing by ranchers and others seeking scarce resources. Since they have no legal claim to the land, they cannot seek redress.[56] In the United Republic of Tanzania, five years after a major titling effort had begun, pastoralists reported their eviction from multiple common grazing areas and were under threat of losing other grazing lands because those lands had been classified as "unused".[57]

26. For these groups, the existence of commons is vital. As noted by the Commission on Legal Empowerment of the Poor, in some legal cultures, community-based ownership of natural resources such as grazing lands, forests, water, fisheries and surface minerals is a traditional and effective way to grant control and proprietary rights to persons who have little or no other property. Such systems should be both recognized and fully protected against arbitrary seizure.[58] Indeed, under existing international law, the requirements applicable to indigenous peoples may have to be extended to at least certain traditional communities that entertain a similar relationship with their ancestral lands, centred on the community rather than on the individual.[59] That would encourage the management of common-pool resources at the local level by the communities directly concerned, rather than through top-down prescriptions or privatization of the commons. When such arrangements are institutionalized,[60] the decentralized management of common-pool resources, recognizing their function as collective goods, is recognized as highly effective. Those negotiating the modalities of the use of the commons have the best information about its carrying capacity, and thus about uses that are sustainable, and the users have strong incentives to monitor the use of the commons and to report infractions.[61]

---

[55] World Bank, *World Development Report 2008*, p. 139.

[56] Statement by Centre for Minority Rights Development to the 41st Session of the Committee on Economic, Social and Cultural Rights: Examination of State Party Report on Kenya, 3 November 2008.

[57] Chambi Chachage, *Prospects and Pitfalls of Legal Empowerment of the Poor in Tanzania: Some Key Observations* (2006), p. 10.

[58] Commission on Legal Empowerment of the Poor, "Making the law work for everyone", *Report of the Commission on Legal Empowerment of the Poor* (2008), vol. I, p. 65.

[59] Inter-American Court of Human Rights, *Case of Moiwana Village v. Suriname* (judgement of 15 June 2005), paras. 132-133; and *Case of the Saramaka People v. Suriname* (judgement of 28 November 2007), para. 86.

[60] Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge University Press, 1990), chap. 5.

[61] See Ashwini Chhatre and Arun Agrawal, "Trade-offs and synergies between carbon storage and livelihood benefits from forest commons", *Proceedings of the National Academy of Science*, vol. 106 (2009), pp. 17667-17670.

IV. Agrarian reform[62]

27. In the presence of the sometimes highly unequal distribution of land in rural areas, strengthening security of tenure may not be sufficient; land redistribution may be required. Article 11, paragraph 2 (a), of the International Covenant on Economic, Social and Cultural Rights recognizes the connection between the right to food and the use of natural resources, committing States to "developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources". This should be understood as encouraging agrarian reform that leads to more equitable distribution of land for the benefit of smallholders, both because of the inverse relationship between farm size and productivity and because small-scale farming (and linking farmers more closely to the land) may lead to more responsible use of the soil.[63] The Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, adopted in 2004 by the States members of the Food and Agriculture Organization of the United Nations (FAO), also encourage agrarian reform (guideline 8.1).

A. Why agrarian reform?

28. Agrarian reform leading to owner-operated family farms is desirable for a number of reasons. As land is transferred to family farms, idle lands of large estates are brought into production, thus increasing productivity levels.[64] A 2003 World Bank analysis of land policies in 73 countries between 1960 and 2000 shows that countries in which the distribution of land was initially more equitable achieved growth rates two to three times higher than those in which land distribution was initially less equitable.[65] Figure I highlights the correlation between the Gini coefficient for land and average per capita growth in gross domestic product (GDP), illustrating the link between unequal initial land distribution and slower economic growth.

---

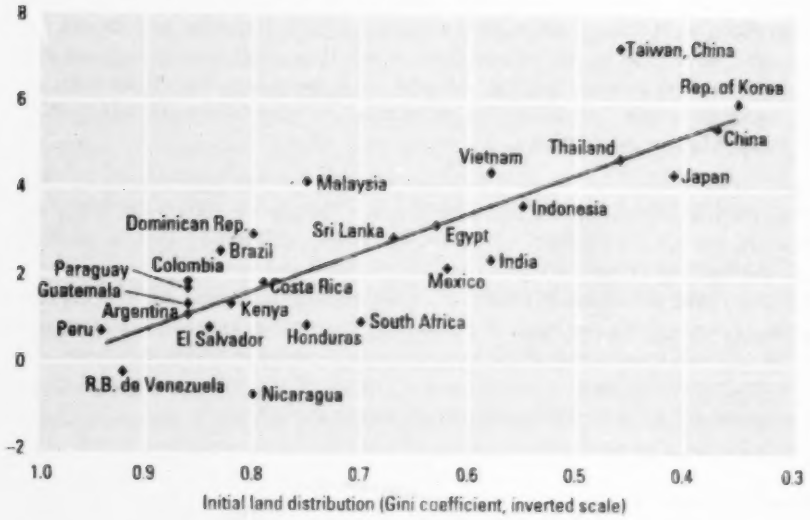
[62] "Land reform" and "agrarian reform" are often used interchangeably in the literature. In the present report, "agrarian reform" refers to land redistribution policies (systematic change in land rights distribution) and the rural development policies that are crucial if such redistribution is to be successful.

[63] A/57/356, para. 30.

[64] David Palmer et al., "Towards improved land governance", Land Tenure Working Paper 11 (FAO and United Nations Human Settlements Programme, 2009), p. 31. On the inverse farm-size productivity relationship and scale effects in agriculture, see Abhijit Banerjee, "Land reforms: prospects and strategies" (Massachusetts Institute of Technology, Department of Economics Working Paper Series, Working Paper 99-24, 1999), pp. 1-5; Saturnino Borras, Jr. et al., "Agrarian reform and rural development: historical overview and current issues", Institute of Social Studies/UNDP Land, Poverty and Public Action Policy paper No. 1 (2007), p. 1.

[65] Deininger, *Land Policies for Growth and Poverty Reduction*, 2003; Keith Griffin et al., "Poverty and the distribution of land", *Journal of Agrarian Change*, 2(3), 2002, p. 315.

Figure I
Average per capita growth in GDP, 1960-2000



Source: World Bank, *World Development Report 2006: Equity and Development* (2005).
Note: Land distribution is measured using the Gini coefficient.

29. The poverty-reducing potential of more equitable land distribution is further illustrated by statistical analyses showing that "a decrease of one third in the land distribution inequality index results in a reduction in the poverty level of one half in about 12-14 years. The same level of poverty reduction may be obtained in 60 years by agricultural growth sustained at an annual average of 3 per cent and without changing land distribution inequality".[66] Land reforms in Asia following the Second World War resulted in a 30 per cent increase in the incomes of the bottom 80 per cent of households, while leading to an 80 per cent decline in the incomes of the top 4 per cent.[67]

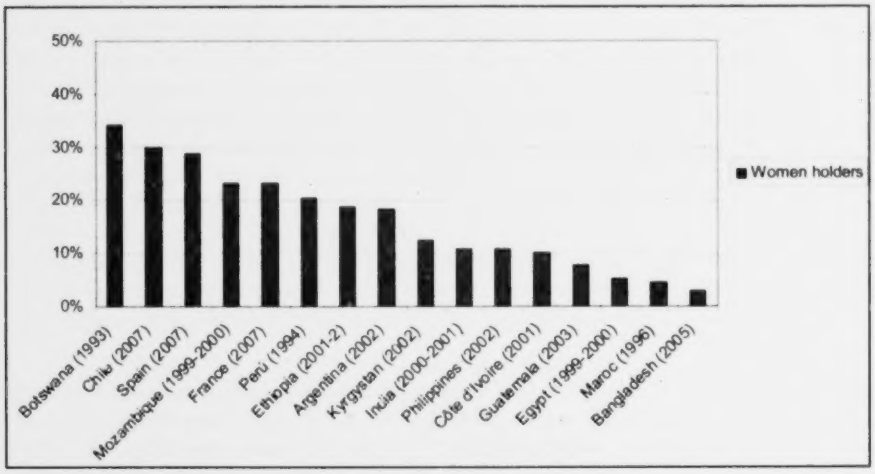
30. In addition to its economic functions of stimulating growth and reducing rural poverty, more equitable access to land for the rural poor contributes to social inclusion and economic empowerment.[68] Access to land also improves food security, since it makes food more easily and cheaply available, providing a buffer against external shocks.[69] Evidence resulting from land redistribution in China suggests that "even though access to land insures household income only moderately against shocks, it provides almost complete insurance against

[66] M. R. El-Ghonemy, "Land reform development challenges of 1963-2003 continue into the twenty-first century", *Land Reform, Land Settlement and Cooperatives*, 2003/2, p. 40.
[67] Veronika Penciakova, "Market-led agrarian reform: a beneficiary perspective of Cédula da Terra", London School of Economics Working Paper Series No. 10-100 (2010), p. 8.
[68] Julian Quan, "Land access in the 21st century: issues, trends, linkages and policy options", Livelihood Support Programme Working Paper 24 (FAO, 2006), p. 3.
[69] M. R. Carter, "Designing land and property rights reform for poverty alleviation and food security", *Land Reform, Land Settlement and Cooperatives*, FAO, 2003/2.

malnutrition".[70] More equitable land distribution and the development of owner-operated family farms are thus desirable on both efficiency and equity grounds.[71] Small family-owned farms can use the land in more sustainable ways, since sustainable farming is often more labour-intensive and requires the linking of farmers to the land. Moreover, where rural areas face high unemployment and underemployment and relative scarcity of land, it is more sensible, from both an economic perspective and a social justice perspective, to raise land productivity than to try to increase labour productivity.

31. Finally, land reform may be seen as an opportunity to strengthen access to land for women, particularly single women and widows. Article 14, paragraph 2 (g), of the Convention on the Elimination of All Forms of Discrimination against Women guarantees the right of women to equal treatment in land and agrarian reform as well as in land resettlement schemes. However, there remain laws and social customs such as those ensuring that the land of a deceased husband belongs to his sons, not to his widow, despite the flagrant violation of women's rights to which this leads. As a result, women still represent a significant minority of the total number of title-holders, as illustrated by the statistics set out in figure II.[72]

Figure II
Proportion of women among the total number of title-holders



32. Land reform may be seen as an opportunity to remedy this imbalance, either by prioritizing the needs of households headed by single women or widows, or by ensuring systematic joint titling in the reform process.

[70] Klaus Deininger and Hans Binswanger, "The evolution of the World Bank's land policy: principles, experience and future challenges", *World Bank Research Observer* 14(2) (1999), p. 256.

[71] Ibid., p. 248.

[72] Compiled by the author on the basis of the FAO Gender and Land Rights Database at http://www.fao.org/gender/landrights (accessed on 19 May 2010).

B. Contribution of land reform to the realization of the right to adequate food

33. The most recent pledges to pursue land reform were made at the International Conference on Agrarian Reform and Rural Development of FAO, convened in Porto Alegre, Brazil, in March 2006. The Final Declaration adopted at the Conference encourages the holding of a national and inclusive dialogue to ensure significant progress on agrarian reform and rural development and the establishment of appropriate agrarian reform "mainly in areas with strong social disparities, poverty and food insecurity, as a means to broaden sustainable access to and control over land and related resources".[73] The Governments represented at the Conference also recommended that the FAO Committee on World Food Security adopt of a set of reporting guidelines in order to monitor the implementation of the Declaration.[74]

34. The preparation of the Voluntary Guidelines on Responsible Governance of Tenure of Land and other Natural Resources, led by FAO, is the single most important attempt to follow up on the commitments made at the Conference,[75] and the Declaration of the World Summit on Food Security, held in 2009, underlines that link.[76] It is too early to assess the Guidelines in the light of what they promise to achieve. At the regional level, however, the African Union's Framework and Guidelines on Land Policy in Africa are an important step in that direction, and the Latin American project to follow up on the Conference, launched in August 2009, involves a large number of countries in the operationalization of the commitments set out in the Declaration. But the overall picture remains uneven across regions.

35. It can be argued that part of the reason for this mixed outcome, lies in the strongly ideological overtones of the debate about how to implement land reform. Over the past generation, the major divide has been between centralized, or State-led, agrarian reform, effectuated through State land acquisitions compensated at below-market prices, and decentralized, or market-led, agrarian reform, based on the principle of a willing buyer and a willing seller. Although State-led agrarian reform has become less common, FAO continues to receive requests for assistance regarding such reform,[77] and certain countries are still redistributing land or have committed to doing so. Since the 1990s, however, there has been a trend towards market-led agrarian reform, as illustrated by programmes such as the Cédula da Terra project, launched in Brazil during the period 1996-2001 and since renewed; the Colombian programme developed under Agrarian Law 160 of 1994; the South African Reconstruction and Development Programme, launched in 1994; the Community-Based Rural Land Development Project in Malawi; and the voluntary land transfer scheme in the Philippines.

36. Unfortunately, although a number of social movements are seeking to increase pressure on Governments (including by resorting to occupations of land), to address this issue, the sense of urgency regarding land redistribution has decreased, because

---

[73] Final Declaration of the International Conference on Agrarian Reform and Rural Development (ICARRD 2006/3), para. 29.

[74] Ibid., para. 30.

[75] FAO, *Towards Voluntary Guidelines on Responsible Governance of Tenure of Land and other Natural Resources* (2008), p. 4.

[76] Declaration of the World Summit on Food Security (WSFS 2009/2), para. 18.

[77] Maximiliano Cox et al., "FAO in agrarian reform", *Land Reform, Land Settlement and Cooperatives*, 2003/2, p. 25.

of the end of the cold war and because of the conviction of many policymakers that technology-driven productivity improvements might be a less contentious alternative to agrarian reform.[78]

37. There are strong arguments, however, in favour of land reform as contributing to the progressive realization of the human right to food, at least in contexts characterized by (a) a high degree of concentration of land ownership (such as a level of inequality higher than a Gini coefficient of 0.65), combined with (b) a significant level of rural poverty attributable to landlessness or the cultivation of excessively small plots of land by smallholders. The implication is that States should monitor existing inequalities in terms of access to land and, where both circumstances are present, should allocate the maximum available resources to agrarian reform schemes and implement those programmes in accordance with the principles of participation, transparency and accountability, to protect them from being appropriated by local elites. Where States fail to establish land redistribution schemes, they should provide justifications for not having done so.

38. While State-led agrarian reforms can generally be quite effective in addressing deeply entrenched inequalities in access to land provided certain conditions are met, market-led agrarian reforms have been less successful in that regard, sometimes even leading to the reconcentration of land, for reasons similar to those that explain the limits of titling as a means to ensure security of tenure.[79] Important lessons can be drawn from past experiences: the success of State-led land reform programmes depends not only on effective land ceiling laws and other appropriate safeguards, such as legal frameworks that clearly define beneficiaries and exempted land, but also on continued social mobilization by peasant organizations, which can be vital partners in the implementation of policies to provide support to new beneficiaries.[80] However, if the redistribution of land is to be sustainable, the beneficiaries must also be supported through comprehensive rural development policies. It has been estimated that improving access to credit and markets, as well as rural extension, can account for 60 to 70 per cent of the total costs of a land reform, exceeding the costs of acquiring and transferring the land.[81] The failure of Latin American reforms when compared with Asian reforms has been attributed to the fact that Latin American reforms have traditionally focused solely on access to land, neglecting rural development policies.[82] In order to be successful, land redistribution must be accompanied by broader agrarian reform policies that support smallholders and improve their ability to compete against larger farms; otherwise, there will be strong

---

[78] See Cox et al., "FAO in agrarian reform", p. 2, and Borras et al., "Agrarian reform and rural development", p. 11.

[79] This conclusion is drawn from a thorough analysis of the wide body of literature on the respective advantages and drawbacks of State-led and market-led agrarian reform models over the past three decades, which cannot be summarized here. Important references include: Saturnino Borras, Jr. and Terry McKinley, "The unresolved land reform debate: beyond State-led or market-led models", Policy Research Brief No. 2 (UNDP, 2006); Palmer et al., "Towards improved land governance", p. 31; Quan, "Land access in the 21st century", p 12; P. Rosset et al., *Promised Land: Competing Visions of Agrarian Reform*; Borras et al., "Agrarian reform and rural development", pp. 4-8; and Cox et al., "FAO in agrarian reform", p. 13.

[80] Borras and McKinley, "The unresolved land reform debate", p. 3; Cox et al., "FAO in agrarian reform", p. 21.

[81] Palmer et al., "Towards improved land governance", p. 31.

[82] World Bank, *Land Policies for Growth and Poverty Reduction* (World Bank and Oxford University Press, 2003), p. 146.

incentives for land reform beneficiaries to sell their land to large landowners.[83] Women should be prioritized in such programmes, as under the Young Farm Women's Training Programme in the Canadian province of Manitoba or in the strategy currently being developed in Norway by the farming sector and the Ministry of Agriculture and Food, aimed at achieving 40 per cent participation by women in agriculture.[84] Land ceiling laws can also help. Although such laws are often circumvented by large landowners — for example, by registering land under the names of proxies — they can increase the amount of land available for redistribution to the poorest households and limit the risk of land reconcentration following reform.[85] A similar result can be achieved by subjecting land transactions to administrative authorization, which enables the administration to object to transactions that would lead to the unacceptable concentration of land, as in Germany under section 9 (1) of the Land Transactions Act.

V. Recommendations

39. **In a context in which commercial pressures on land are increasing, it is crucial that States improve the protection of land users. The following recommendations seek to give concrete meaning to the land-related aspects of the human right to food.**

40. **In order to respect the right to food, States should:**

(a) **Ensure security of tenure. States should take measures to confer legal security of tenure upon those persons, households and communities currently lacking such protection, including all those who do not have formal titles to home and land.[86] The adoption of anti-eviction laws imposing strict conditions for interference with the rights of land users should be seen as a priority. This should supplement any strengthening of the regulatory framework concerning expropriation, which itself should provide clear procedural safeguards for landowners while, at the same time, providing for the possibility of agrarian reform where land concentration is excessive;**

(b) **Refrain from criminalizing legitimate social protest. Where insufficient progress has been made on the implementation of the commitments set out in the Final Declaration of the International Conference on Agrarian Reform and Rural Development, and where deep land inequalities remain, the non-violent occupation of land by landless movements should not be criminalized. Human rights defenders who protest evictions and defend or promote land rights should be protected;**

(c) **Respect the needs of special groups. States should implement the specific rights of indigenous peoples by demarcating their lands and territories**

---

[83] The 22 recommendations made in the 2008 International Assessment of Agricultural Knowledge, Science and Technology for Development provide a good overview of what such comprehensive policies should contain; available at http://www.agassessment.org/.

[84] In Norway, although discrimination against women in access to agricultural land has now been abolished, only 14.3 per cent of farmers are women.

[85] El-Ghonemy, "Land reform development challenges of 1963-2003 continue into the twenty-first century", p. 37.

[86] A/HRC/4/18, annex I, para. 25.

and by providing them with specific protection. States should also protect access to fishing grounds, grazing grounds and water points for fisherfolk, herders and pastoralists, for whom the protection of commons is vital. The recognition of communal rights should extend beyond indigenous communities, at least to certain communities that entertain a similar relationship with the land, centred on the community rather than on the individual;

(d) Prioritize development models that do not lead to evictions, disruptive shifts in land rights and increased land concentration. States should carefully consider the development models that they follow, as the mainstream agro-export-led model has major detrimental impacts on the access to land of vulnerable groups, disproportionately favouring the largest producers and landowners. Land investments implying an important shift in land rights should represent the last and least desirable option, acceptable only if no other investment model can achieve a similar contribution to local development and improve the livelihoods within the local communities concerned.

41. **In order to protect the right to food, States should:**

(a) Conduct decentralized mapping of various users' land rights and strengthen customary systems of tenure. Mapping should be performed at the level of the local community and in a participatory manner. While customary systems of tenure may receive legal recognition, public authorities should ensure that appropriate safeguards are established in order to ensure that control by the community will not be exercised arbitrarily or in ways that lead to discrimination or inequitable outcomes, in keeping with international norms and standards. States should establish appropriate mechanisms for the resolution of land conflicts between landlords and tenants, between land users and the State or between private-sector entities involved in development projects;

(b) Adopt tenancy laws, and effectively implement existing laws against the pressure to free land for private investors. The adoption of tenancy laws can protect tenants from eviction and from excessive levels of rent. Such laws can also allow a tenant's heirs to occupy the land if the tenant dies, and provide the tenant with the right to pre-emption if the landowner wishes to sell (ideally, at a below-market price); they can provide for the joint titling of husband and wife as tenants, in order to protect widows from the risk of eviction; and they can ensure that the tenant will be allowed to remain on the land if the property changes hands;

(c) Ensure that all land investment projects are consistent with the relevant obligations under international human rights law, as reiterated in a previous contribution by the Special Rapporteur.[87]

42. **In order to ensure the enjoyment of the right to food, States should:**

(a) Implement the conclusions set out in the Final Declaration of the International Conference on Agrarian Reform and Rural Development and prioritize "improved" State-led land redistribution programmes. States should implement land redistribution programmes where a high degree of land ownership concentration (which could be defined as a level of inequality higher

[87] A/HRC/13/33/Add.2.

than a Gini coefficient of 0.65) is combined with a significant level of rural poverty attributable to landlessness or to the cultivation of excessively small plots of land by smallholders. Redistributive agrarian reforms should: (a) include comprehensive rural development policies that follow the recommendations resulting from the International Assessment of Agricultural Science and Technology for Development, including extension systems, access to credit and agricultural research and support beneficiaries, provided with sufficient budgets; (b) make use of land ceiling laws and be based on legal frameworks that clearly define beneficiaries and exempted land; (c) encourage communal ownership systems, rather than focusing solely on individual beneficiaries; (d) be implemented in accordance with the principles of participation, transparency and accountability, in order to prevent their appropriation by local elites; (e) be grounded in constitutional provisions regarding the social functions of land, where such provisions exist. All States should monitor land inequalities before and after the implementation of such programmes;

(b) Ensure that market-led land reforms are compatible with human rights. If, despite the reservations expressed in the present report, States choose to seek to improve security of tenure through titling programmes and the creation of land rights markets, they should:

(i) Regulate such markets by taking appropriate measures to prevent increased land speculation, increased land concentration, abuse of customary forms of tenure by new landowners, and distress sales by indebted farmers;

(ii) Ensure that titling schemes benefit women and men equally, correcting existing imbalances if necessary;

(iii) Encourage communal ownership systems (rather than individual titling) where local communities have a need for them;

(iv) Prioritize the titling of land for those who are dependent on land for their livelihoods and are more vulnerable to land-grabbing, rather than for those who claim to be the formal landowners;

(c) Establish specialized recourse mechanisms at the local level that are accessible, work transparently and include safeguards against corruption.

43. The Special Rapporteur also makes the following recommendations to the international community:

(a) Establish adequate governance instruments to operationalize the commitments set out in the Final Declaration of the International Conference on Agrarian Reform and Rural Development. The Voluntary Guidelines on Responsible Governance of Tenure of Land and other Natural Resources could make a significant contribution, provided that they:

(i) Encompass land redistribution issues in addition to land administration issues, consistent with the Conference commitments;

(ii) Provide for the systematic and comprehensive interpretation of existing provisions of international human rights and environmental law that protect the rights of land users in all categories, whether indigenous

peoples or other rural groups such as peasants, pastoralists and fisherfolk. The international recognition of the rights of these groups is scattered among various instruments and lacks systematic interpretation. The FAO Committee on World Food Security could also play an important role by:

a. Establishing a mechanism for follow-up to the Conference commitments;

b. Commissioning an independent review by the Committee's High-level Panel of Experts on Food Security and Nutrition of best practices in agrarian reform;

(b) Donors should increase their support for the implementation of land redistribution programmes and the strengthening of land administrations. The importance of land administrations free from corruption and equipped with sufficient resources and well-trained officials has been and continues to be underestimated in the reinvestment in agriculture since the 2008 global food crisis;

(c) Governments investing in farmland abroad should ensure that they do so in accordance with their human rights obligations. They should regulate the conduct of private actors on which they can exercise an influence, thus helping to protect the human rights of the communities concerned. Similar obligations exist for development banks funding projects that have an impact on land rights (see A/HRC/13/33/Add.2, para. 5);

(d) International human rights bodies should consolidate the right to land and take land issues fully into account when ensuring respect for the right to adequate food. The Committee on Economic, Social and Cultural Rights could play a leading standard-setting role in clarifying the issue of land as a human right by issuing a general comment in that regard. Acting in their monitoring capacity, human rights bodies should examine the justifications offered by Governments that fail to put in place land redistribution programmes or policies with similar aims, despite the existence of a high degree of concentration of land ownership, combined with a significant level of rural poverty attributable to landlessness or inequitable land distribution.

United Nations A/65/282

General Assembly

Distr.: General
11 August 2010

Original: English

Sixty-fifth session
Item 69 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Protection of and assistance to internally displaced persons

Note by Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, in accordance with General Assembly resolution 62/153 and Human Rights Council resolutions 6/32 and 14/6.

* A/65/150.

10-48224 (E) 070910

Please recycle

Report of the Representative of the Secretary-General on the human rights of internally displaced persons

Summary

The present report outlines the major activities undertaken by the Representative during the period from August 2009 to July 2010. It also provides a thematic review of the responsibility of States to provide humanitarian assistance and of the rights of internally displaced persons to such assistance, an issue closely linked to that of humanitarian access.

Contents

		Page
I.	Introduction	3
II.	Mandate and activities	3
	A. Mandate	3
	B. Country engagement	3
	C. Cooperation with regional and international organizations	9
	D. Capacity-building and other activities	10
	E. Mainstreaming the human rights of internally displaced persons in the United Nations system	12
III.	Thematic section: the primary duty of the State to provide humanitarian assistance and the corresponding rights of internally displaced persons	13
	A. Factors impeding humanitarian assistance	14
	B. The obligation to ensure the provision of humanitarian assistance	16
	C. The obligation not to arbitrarily withhold consent	19
	D. The obligation to coordinate and not to impede or divert humanitarian assistance	21
	E. The obligation to protect persons engaged in humanitarian assistance, their transport and supplies	22
IV.	Conclusions and recommendations	23

I. Introduction

1. The present report is the last by the current Representative of the Secretary-General on the human rights of internally displaced persons, whose mandate ends in October 2010. It is presented in accordance with General Assembly resolution 62/153, Human Rights Council resolution 6/32, and the most recent Council resolution 14/6, adopted June 2010, extending the mandate for another three-year period.

2. The report provides an overview of the main activities of the Representative during the period from August 2009 to July 2010. It also contains a thematic section on the responsibility of States to provide humanitarian assistance and the corresponding rights of internally displaced persons, an issue closely linked to that of humanitarian access.

II. Mandate and activities

A. Mandate

3. Human Rights Council resolutions 6/32 and 14/6 mandate the Representative with the task of addressing the complex problem of internal displacement, in particular by mainstreaming the human rights of internally displaced persons into all relevant parts of the United Nations system and working towards strengthening the international response through coordinated international advocacy and action for improving the protection of and respect for the human rights of internally displaced persons (see paras. 6 and 11 of resolutions 6/32 and 14/6, respectively).

4. In accordance with his mandate, the Representative has endeavoured to promote a rights-based approach to internal displacement through a constructive dialogue with Governments and extensive mainstreaming activities within the United Nations and regional organizations. In order to effectively address the human rights of internally displaced persons, it is essential to focus on different fronts, namely human rights promotion and protection, humanitarian action, recovery and development and peacebuilding.

5. Throughout his mandate, the Representative was supported by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and benefited from close cooperation with the Office for the Coordination of Humanitarian Affairs and the Office of the United Nations High Commissioner for Refugees (UNHCR). He also received support from the Brookings-Bern Project on Internal Displacement, in particular in the areas of research, capacity-building and advocacy.

B. Country engagement

6. During the period from August 2009 to July 2010, the Representative engaged with a number of countries. He wishes to express his appreciation to the Governments that issued invitations to him or otherwise engaged with the mandate during the current period and throughout the last six years.

1. Azerbaijan

7. The Representative undertook a follow-up mission to Azerbaijan from 19 to 24 May 2010.[1] He last visited the country in 2007. While noting important progress, such as the closing of tented camps, the Representative emphasized that the protracted nature of the displacement, which has persisted for nearly two decades, continues to affect the human rights of close to 600,000 internally displaced persons, many of whom continue to live under difficult circumstances.

8. The Government has committed significant resources to improving housing conditions by building a large number of houses and apartments for internally displaced persons. However, the majority of internally displaced persons are still without homes, and access to adequate housing remains one of their most serious problems. Efforts to improve and secure housing rights should be continued, in particular for those still living in Finnish-type settlements in rural areas, or in urban collective centres such as dormitories, and for those potentially at risk of eviction in urban centres.

9. More concerted action is required to improve employment and livelihood opportunities for internally displaced persons, whose unemployment and poverty rates are still significantly higher than those of the rest of the population. Persons living in urban areas or new settlements in more remote areas are in need of specific programmes that will end or reduce the pattern of dependency.

10. With regard to health, the Representative commends the mental health assessment of internally displaced persons conducted by the World Health Organization (WHO), as well as the resulting action plan and new incentives programme put in place by the Government to improve the provision of qualified medical staff in rural areas.

11. In the field of education, despite the official abolition of segregation policies for children from displaced communities and the construction of new school buildings, there are persistent concerns about the quality of education provided to internally displaced children and youth. The Representative recommends undertaking an assessment of the quality and educational needs of internally displaced persons, and encourages measures to promote mixed schooling and increased opportunities for interaction between local children and children from internally displaced communities.

12. The Representative also highlighted a number of other issues requiring Government attention, including the need to conduct a needs assessment to determine how many internally displaced persons continue to require assistance and to develop a comprehensive return plan that addresses the many complex issues associated with a possible return to their areas of origin. He further stressed the need to strengthen efforts to engage internally displaced persons in consultative and participatory processes on issues that affect them. Lastly, he stressed the importance of concluding a peace agreement to end their plight, and emphasized that such an agreement must address the rights of the displaced.

[1] A mission report will be submitted to the sixteenth session of the Human Rights Council.

2. Bosnia and Herzegovina

13. From 11 to 13 November 2009, the Representative visited Bosnia and Herzegovina to discuss the impasse over the revised strategy for the implementation of annex 7 to the Dayton Peace Agreement. In June 2010, the national Parliament finally adopted the revised strategy. The Representative welcomes this major step towards finding durable solutions for internally displaced persons in Bosnia and Herzegovina and calls on all stakeholders to implement it without further delay.

3. Central African Republic

14. The Representative undertook a follow-up mission to the Central African Republic from 9 to 17 July 2010,[1] his third visit to that country since 2007. He noted that, while the situation had stabilized in the north-western part of the country and many had returned since his last visit, those who remained displaced continued to face a humanitarian crisis as well as insecurity caused, notably, by banditry. Their children had not had access to education for years. Those who had returned to their villages were in need of support to rebuild their lives.

15. The Representative was concerned about the situation around Ndélé (Bamingui-Bangoran prefecture), where many people had fled into the bush as a result of recent armed clashes. At the time of his visit, they remained without any humanitarian assistance and were suffering from a shortage of food, drinking water and a total absence of health services. In addition, acts of grave violence committed against the civilian population had been reported.

16. The situation in the south-east of the country (Mbomou and Haut-Mbomou prefectures), where several thousands of people have been displaced as a result of brutal attacks against the civilian population by the Lord's Resistance Army, was equally alarming. The Representative called on the Government to ensure the protection of the civilian population, with the support of the international community, including by reinforcing the presence of security forces in the region.

17. The Representative was also deeply concerned that humanitarian access to several regions in the country was severely restricted owing to security reasons. However, he was encouraged by the lifting of military restrictions on humanitarian access to areas outside and around Ndélé at the end of his visit.

18. The Representative emphasized that efforts to build sustainable peace must take into consideration the rights of the 200,000 remaining internally displaced persons, and welcomed the fact that internal displacement is addressed in the strategic framework for peacebuilding in the Central African Republic 2009-2011 (see PBC/3/CAF/7). The return and reintegration of the displaced, as well as their participation in the forthcoming elections, are crucial factors for sustainable peace, as is the process of disarmament, demobilization and the reintegration of combatants.

19. The Representative had the opportunity to participate in a workshop in July, at which the Government and other stakeholders worked on the development of a national legal and institutional framework to address situations of internal displacement. He encourages the swift elaboration and implementation of that framework.

4. Chad

20. As a follow-up to a mission to Chad in February 2009, the Representative attended a workshop on durable solutions for internally displaced persons in eastern Chad in March 2010. The workshop, jointly organized by the Ministry of Economy and Planning, the United Nations Development Programme (UNDP), the Office for the Coordination of Humanitarian Affairs, UNHCR and the Representative, brought together key stakeholders from the Government, the international community and civil society to discuss strategies for addressing challenges related to durable solutions. On 30 April, the Representative sent a follow-up letter to the Government providing suggestions on promoting durable solutions in areas of return and local integration. The Representative further highlighted that the achievement of durable solutions for displaced populations is a key element towards the consolidation of peace in eastern Chad. A joint strategy is currently being developed to support durable solutions, which is based on the recommendations resulting from the workshop, the recommendations of the Representative and the findings of the inter-agency missions covering the different regions affected by displacement.

5. Democratic Republic of the Congo

21. At the request of the Human Rights Council, the Representative and six other special procedures mandate-holders submitted a joint report to the Council on the human rights situation in the Democratic Republic of the Congo. The experts found that the human rights situation had not improved and remained of serious concern. They noted, in particular, that the Government had neglected its responsibilities to protect and assist internally displaced persons and returnees (see A/HRC/13/63, paras. 106 and 111).

6. Iraq

22. In April 2010, the Representative held a series of meetings in Amman with United Nations and other humanitarian agencies as well as the diplomatic and donor communities, to discuss their current involvement and efforts in addressing the situation of internally displaced persons in Iraq. Discussions focused on the need to systematically integrate efforts to achieve durable solutions for internally displaced persons in development initiatives, without neglecting their humanitarian needs.

7. Kenya

23. From January to March 2010, the Representative supported the development of a draft national policy on internal displacement in Kenya by providing technical support to the Government-led Protection Working Group on Internal Displacement, under whose auspices the policy was developed. The Representative was impressed by the variety of different actors actively participating in the process, including representatives from the community of internally displaced persons, and commends the Government of Kenya for its efforts to incorporate the Guiding Principles on Internal Displacement (Guiding Principles) (see E/CN.4/1998/53/Add.2) into its domestic legislation and for striving to meet its obligations under the 2006 Protocol on the Protection and Assistance to Internally Displaced Persons (Great Lakes Protocol) adopted by the States members of the International Conference on the Great Lakes Region.

24. The efforts of the Government of Kenya are in line with a growing trend that has been strongly reinforced by the Great Lakes Protocol, which requires States members to incorporate the Guiding Principles into domestic legislation. With the adoption of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), the demand for the elaboration of national policies and legislation relating to internal displacement is expected to increase. The Representative strongly supports these national initiatives and encourages the international community, in particular actors directly involved in legal issues pertaining to internal displacement, to support national authorities in these endeavours. In this regard, *Protecting Internally Displaced Persons: A Manual for Law and Policy Makers*[2] provides a useful tool for national and international actors.

8. Somalia

25. The Representative visited Somalia from 14 to 21 October 2009 (see A/HRC/13/21/Add.2). He was appalled at the degree of violence against the civilian population and, in particular the internally displaced persons in south and central Somalia, where serious violations of international humanitarian and human rights law are committed in an environment of impunity. Over 1.5 million internally displaced persons, the vast majority of whom are women and children, remain highly vulnerable to serious human rights violations, in particular sexual violence, during flight and in settlements where they seek refuge. Many try to find safety in urban centres in Puntland or Somaliland, placing enormous strain on the already limited local resources and basic services. The perception by many locals, especially in Puntland, that internally displaced persons from south and central Somalia represent a security risk, also remains a major concern.

26. The Representative followed up on this visit by participating in meetings regarding United Nations operations in Somalia, held in Nairobi in March 2010. At that time, the humanitarian space in south and central Somalia had shrunk to such an extent that the World Food Programme had to suspend its operations. Severe constraints on humanitarian access and security risks for humanitarian workers remain a major challenge for operations in Somalia. The Representative urges the international community to focus its efforts and attention on this very serious long-standing humanitarian crisis.

9. Sri Lanka

27. The Representative's second visit to Sri Lanka in 2009[3] came at a time when over 250,000 internally displaced persons were still being held in closed camps, despite vast improvements in the security situation. In view of the Government's commitments under international law, the restoration of freedom of movement to those persons had become a matter of urgency. During the visit, the Representative discussed strategies for decongesting the camps with the Government and urged it to restore freedom of movement as a priority. Since that visit, over 200,000 displaced persons have been released from camps or resettled, which is a significant achievement. However, finding durable solutions for these displaced persons, as

[2] See *Protecting Internally Displaced Persons: A Manual for Law and Policymakers*, Brookings Institution-University of Bern Project on Internal Displacement, 2008.

[3] See A/64/214, paras. 58 to 64, for details of his initial visit.

well as the 300,000 persons who had been in long-term displacement, remains a pressing challenge which the Government of Sri Lanka is urged to address, in line with recognized international legal standards.

10. Tskhinvali Region/South Ossetia

28. On 5 and 6 November 2009, the Representative visited the Tskhinvali Region/South Ossetia (A/HRC/13/21/Add.3) to follow up on his mission to Georgia in October 2008. The Representative noted serious violations of international humanitarian law during the conflict, including the systematic destruction of property, looting and indiscriminate attacks on civilians, as well as challenges concerning humanitarian access and freedom of movement.

11. Yemen

29. The Representative's visit to Yemen from 4 to 10 April 2010 came at a time of transition from armed hostilities to a fragile ceasefire agreement. Limitations on humanitarian access to parts of Sa´ada, Amran and Al-Jawf governorates continued to hinder the efforts of the United Nations and other humanitarian organizations to reach internally displaced persons in those areas and to monitor return movements. The displacement situation warranted continued humanitarian assistance to all displaced persons, both in and outside camps, but such assistance was jeopardized by a lack of humanitarian funding. The Representative commended the approach of the humanitarian community, which sought to address the needs not only of the displaced living in camp settings, but also of those living in scattered settlements and rented apartments, and host communities. He recommended that humanitarian assistance be complemented by small-scale livelihood projects in displacement areas, in order to limit dependency on assistance.

30. Return perspectives for internally displaced persons in Yemen will vary, depending on their circumstances. Return may be an option for those who do not fear reprisals or have to contend with the destruction of their homes. For others, in particular those from areas that are mined or have suffered severe destruction, sustainable returns will be dependent on substantial recovery and reconstruction efforts as well as the re-establishment of a State presence. Still others may not be in a position to return at all, and will need support and genuine options for local integration where they currently live.

31. Obstacles to return are therefore manifold and, unless adequately addressed, may result in a protracted displacement situation for a substantial number of persons who will not be in a position to return in the foreseeable future or whose return may prove unsustainable, leading to renewed displacement. The Representative welcomed the Government's readiness to develop, together with the United Nations and the technical support of the Representative's mandate, a comprehensive national strategy on internal displacement that seeks to improve the lives of displaced persons and promote the creation of durable solutions.

C. Cooperation with regional and international organizations

1. European Union

32. In April 2010, the Representative held a series of meetings in Brussels with key counterparts in the European Union. Discussions on both country-specific situations (in particular, Yemen) and thematic issues related to internal displacement were held with counterparts in the Directorate-General for External Relations of the European Commission, the General Secretariat of the Council of the European Union, the Yemen desk of the European Commission and the European Commission's Directorate-General for Enlargement. The Representative also held discussions with the Chair of the Committee on Development of the European Parliament and the Director-General of the European Commission's Humanitarian Aid department, and made a presentation to the European Parliament's Subcommittee on Human Rights.

2. World Bank

33. The World Bank launched a programme on internal displacement in 2009 that aims to strengthen the capacity of its national offices to contribute to durable solutions for internally displaced persons. The Representative was closely involved in the design of this programme and participated in a review of its activities in June 2010. The Representative is encouraged by the fact that the World Bank has placed the issue of internal displacement on its agenda and that it has engaged the United Nations in the development and implementation of its programme.

3. International Committee of the Red Cross

34. The Representative has maintained cooperation with the International Committee of the Red Cross, both at headquarters and in the field. On the invitation of the Vice-President of the Committee, the Representative met with several of its representatives in Geneva in June 2009 for an open dialogue session on issues of mutual concern, including recent challenges in the protection of internally displaced persons, relevant normative developments, and the Committee's operational approach to the protection of internally displaced persons. The Representative expressed appreciation for the fruitful dialogue and welcomed the Committee's new internal displacement policy.

4. Civil society

35. During the reporting period, the Representative maintained ongoing contact with civil society organizations in both Geneva and New York, and in the countries visited. In addition to regular exchanges of information and meetings with civil society actors during country missions, the Representative also cooperated with civil society in the implementation of capacity-building and training activities. The Representative is particularly grateful for the close cooperation with the Internal Displacement Monitoring Centre, which provided information on country missions, coordinated workshops and promoted discussion on a number of future projects and issues related to internal displacement.

D. Capacity-building and other activities

1. Development of tools and manuals

Integrating internal displacement in peace processes and agreements: a guide for mediators

36. Finding durable solutions for internally displaced persons represents a major challenge in post-conflict societies. While the return of internally displaced persons is often used as a benchmark for a successful peace process, it is also true that the failure to achieve durable solutions for displaced populations can undermine a peace process. This is particularly true in situations of large-scale displacement or when internally displaced communities have an influence on the political process.

37. Experience has shown that addressing internal displacement in peace agreements is key to achieving durable solutions for the displaced as well as strengthening ownership of the peace process. However, internal displacement is often a marginal or ad hoc add-on to peace agreements, if it is addressed at all. In a climate where negotiating parties are often reluctant to engage with internally displaced communities, the task may fall to mediators to introduce internal displacement in peace negotiations.

38. With this in mind, a guide for mediators containing suggestions on how to integrate internal displacement into peace processes and peace agreements[4] was developed by the Representative, in close cooperation with the Mediation Support Unit of the Department for Political Affairs and mediation experts. The publication provides guidance to mediators on how to create the necessary space in mediation processes to enable discussions on internal displacement issues, details different models of engagement with affected populations, and identifies the displacement-specific human rights that should be addressed in peace agreements.

39. The publication was presented to different audiences at a number of book launches in Bern, Brussels, Geneva, Nairobi and New York.

Revised Operational Guidelines on Protection in Natural Disasters

40. In 2010, the Representative undertook the revision of the Operational Guidelines on Human Rights and Natural Disasters as requested by the Protection Cluster Working Group and the Task Force on Protection in Natural Disaster Situations of the Global Protection Cluster. The revised guidelines merge and improve on the original Guidelines developed by the Representative in 2006,[5] and the accompanying manual developed in 2008, which provided practical advice on protecting the human rights of those affected by a natural disaster during the emergency response phase.

41. Based on these earlier documents and in cooperation with different Inter-Agency Standing Committee members, the Representative and the Brookings-

---

[4] Brookings-Bern Project on Internal Displacement, *Integrating Internal Displacement in Peace Processes and Agreements* (Washington, D.C., 2010). Available from www.id.cdint.org.

[5] Brookings-Bern Project on Internal Displacement, *Protecting Persons Affected by Natural Disasters: IASC Operational Guidelines on Human Rights and Natural Disasters* (Washington, D.C., 2006). Available from www.brookings.edu/reports/2006/11_natural_disasters.aspx and www.humanitarianinfo.org/iasc.

Bern Project on Internal Displacement, conducted a series of workshops in the past two years. Some 300 Government officials, humanitarian and development actors, members of security forces and fire brigades participated in eight workshops in Central America, Southern Africa and South/South-East Asia. The revised Guidelines draw on and reflect the feedback gathered at these workshops and from various organizations. They were presented to the Inter-Agency Standing Committee Working Group in July 2010, and endorsement is expected in early September 2010.

IASC Framework on Durable Solutions for Internally Displaced Persons

42. In 2009, the Representative revised the 2006 IASC Framework on Durable Solutions for Internally Displaced Persons, in close cooperation with the Global Protection and Early Recovery Clusters. This revision took into account the results from a major workshop conducted in May 2008 and feedback from the field. The new Framework[6] was endorsed by the Inter-Agency Standing Committee Working Group in December 2009 and presented to the Human Rights Council in March 2010.

43. The Framework stresses that durable solutions are reached when internally displaced persons no longer have any specific assistance and protection needs related to their displacement and can enjoy their human rights without discrimination. The Achievement of durable solutions must be viewed as a gradual process that could include return and sustainable reintegration in the place of origin; sustainable local integration in areas of displacement or settlement; or sustainable integration in another part of the country. The Framework defines key principles to be taken into account; central elements to consider for achieving durable solutions; and benchmarks for determining the extent to which a durable solution has been achieved.

2. Training courses and workshops

Annual course on internal displacement law

44. The Representative, the Brookings-Bern Project on Internal Displacement, the International Institute of Humanitarian Law and OHCHR co-organized the sixth annual course on internal displacement law, which provides training to high-level officials from different parts of the world who work in the field of internal displacement. The course was held in San Remo, Italy, from 7 to 12 June 2010, and included 22 participants from 13 displacement-affected countries.

Regional workshop: protecting and promoting rights in natural disasters in South-East Asia

45. On 14 and 15 May 2010, the Representative participated in a regional workshop on protecting human rights in natural disasters in South-East Asia, in Yogyakarta, Indonesia. The workshop was organized by the Brookings-Bern Project on Internal Displacement, the All India Disaster Migration Institute, the Center for Security and Peace Studies and Gadjah Mada University. It brought together 35 representatives from Government, the United Nations, the International Red Cross and Red Crescent Movement and international and national non-governmental

[6] See A/HRC/13/21/Add.4. The Framework is also available from www.brookings.edu/reports/2010/04_durable_solutions.aspx and www.humanitarianinfo.org/iasc.

organizations, and enabled them to share good practices and become familiarized with the Operational Guidelines on Human Rights and Natural Disasters.

E. Mainstreaming the human rights of internally displaced persons in the United Nations system

Inter-Agency Standing Committee

46. The Inter-Agency Standing Committee is the key platform for the Representative to mainstream the human rights of internally displaced persons within the United Nations system and the wider humanitarian community, as requested by his mandate. The Representative and his staff participate at all levels of the Committee (the principals, the Working Group and the task forces).

47. The Representative led two major consultation processes on key policy documents, namely the IASC Framework on Durable Solutions for Internally Displaced Persons, endorsed in December 2009, and the Operational Guidelines on Human Rights and Natural Disasters, to be endorsed in September 2010. Further details on these policy documents are provided in section D of the present report. He was closely involved in the Committee's advocacy efforts on the humanitarian implications of climate change and, together with other Committee principals, he participated in a high-level panel discussion at the United Nations Climate Change Conference in Copenhagen in December 2009.

48. The Representative also co-authored a working paper on the protection of internally displaced persons outside camps, which was discussed by the Inter-Agency Standing Committee Working Group in July 2010. In view of the fact that the majority of internally displaced persons live outside camps, he hopes that this discussion paper will trigger reflection and encourage practical changes among humanitarian actors, to ensure a more equitable response to situations of internally displaced persons living outside camp settings.

Office for the Coordination of Humanitarian Affairs

49. A staff member of the Office for the Coordination of Humanitarian Affairs worked with the Representative throughout his mandate, which facilitated better outreach to the different actors at Headquarters and to the Office for the Coordination of Humanitarian Affairs in particular. It also enabled the Representative to maintain a regular dialogue and to coordinate his activities with the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator. In addition, the Office provided regular support to his missions and valuable contributions to policy documents. Together with the Office and OHCHR, the Representative also organized a side event on human rights and durable solutions in Haiti, in the margins of the Human Rights Council session in March 2010.

Office of the United Nations High Commissioner for Human Rights

50. In accordance with the request of the Human Rights Council, OHCHR provides overall substantive and logistical support to the activities of the Representative, including on thematic reports and other working papers on a variety of subjects, and in the form of field support during the preparation and conduct of

country missions. In addition, OHCHR helps to ensure communication and complementarity between the Representative's work and that of other special procedures mandates (for example, joint report on the Democratic Republic of the Congo and joint communications), and contributes to or co-organizes joint events, such as ad hoc meetings on topical issues, training events and panel discussions.

Office of the United Nations High Commissioner for Refugees

51. The Representative maintained his memorandum of understanding with UNHCR, thereby strengthening their collaboration and enabling him to place one externally funded staff member in the office. In this context, UNHCR provided support to the Representative's activities both at Headquarters and in the field, including by assisting in the preparation, implementation and follow-up to his country visits. In particular, it conducted a number of working visits to support national strategy and planning processes, such as with regard to durable solutions or legislative and policy initiatives related to internal displacement.

52. Within this collaborative arrangement, the Representative welcomed the opportunity to actively consult with and serve as a resource person to UNHCR on matters related to his mandate. In addition, he supported the mainstreaming of internal displacement issues within UNHCR by participating in its internal Learning Programme for Senior Managers on Internally Displaced Persons, in thematic or country-specific round-table discussions, and in dialogue sessions on current issues of concern related to internal displacement.

Special Representative of the Secretary-General for Children and Armed Conflict

53. The Representative engaged in a regular dialogue with the Special Representative of the Secretary-General for Children and Armed Conflict, and welcomed the fact that the Office had made the rights of displaced children in armed conflicts an advocacy priority. He contributed to its working paper on this subject, which is to be published in 2010 and will provide an excellent advocacy and protection tool for humanitarian and human rights workers.

Peacebuilding Commission

54. The Representative enjoyed regular interaction with the Peacebuilding Commission, in particular with regard to country-specific situations, such as that of the Central African Republic. With respect to the latter, he endeavoured to coordinate his activities with the Commission's and contributed to the midterm review of its country strategy scheduled for December 2010. He also provided comments to the Chair of the country-specific configuration on Burundi on a proposed new return policy and addressed the members of the configuration at a meeting in July 2010.

III. Thematic section: the primary duty of the State to provide humanitarian assistance and the corresponding rights of internally displaced persons

55. In his last report to the Human Rights Council, the Representative identified eight current key challenges in the area of internal displacement for States, the

international community and internally displaced persons (see A/HRC/13/21, paras. 39 to 79). This section highlights one of these challenges, namely that of ensuring humanitarian assistance to internally displaced persons.

56. According to the Guiding Principles on Internal Displacement, States have the primary duty and responsibility to provide humanitarian assistance to internally displaced persons within their jurisdiction (see para. of Guiding Principles 3 and 25). The Guiding Principles are based upon and reflect international human rights and humanitarian law, and are recognized as an "important international framework for the protection of internally displaced persons".[7]

57. The provision of humanitarian assistance[8] is not merely a discretionary act of humane compassion. Internally displaced persons and other people affected by conflict or natural disaster remain entitled to fully enjoy their human rights, including their right to life, food, water and sanitation, clothing, housing, health care and education, rights which, taken together, may be interpreted as the right to receive humanitarian assistance. Moreover, these rights must be discharged by national authorities in good faith, either directly or by facilitating the provision of humanitarian assistance by third parties.

58. However, the reality on the ground reveals a different picture. Too frequently, internally displaced persons remain unable to receive or access the goods and services essential for their well-being or even their survival, most often as a result of abuse or neglect. At the same time, humanitarian access by international and non-governmental actors is shrinking, making it increasingly difficult for the international community to assess and provide for the humanitarian needs of displaced populations.

59. In this context, it is particularly relevant to identify the rights of internally displaced persons and the corresponding duties of States. This section aims to outline the responsibility of States[9] with regard to the provision of humanitarian assistance, examine the factors that most often impede humanitarian access, and provide recommendations on the way forward.

A. Factors impeding humanitarian assistance

60. Situations where internally displaced persons do not have access to the necessary humanitarian assistance or where access by humanitarian organizations is problematic are caused by multiple and complex factors.

61. At times, domestic authorities and other actors may wish to ensure assistance to their own constituencies, while "punishing" or neglecting others, such as populations perceived as being associated with political or military opponents or

---

[7] See the 2005 World Summit Outcome, General Assembly resolutions 60/1, para. 132; 62/153, para. 10; and 64/162, para. 11; and Human Rights Council resolutions 6/32, para. 5; and 14/6, para. 9.

[8] Humanitarian assistance comprises all goods and services necessary to the survival and basic welfare of persons. It also extends to goods and services provided by humanitarian actors to ensure early recovery, such as the construction of transitional school buildings, the rehabilitation of water sources or the provision of livestock, seeds and tools.

[9] The issue of the responsibility of the international community and international actors requires a separate discussion that is not possible in the present report, owing to space constraints.

religious or ethnic minorities. In Nepal, only those displaced by the Maoists could register as internally displaced persons during the internal armed conflict (see E/CN.4/2006/71/Add.2, para. 22). In Colombia, the Representative received allegations that internally displaced persons registering for State assistance were often expected to attribute their displacement to insurgents (see A/HRC/4/38/Add.3, para. 31). In other contexts, humanitarian assistance is subject to conditions that are equally motivated by political aims but are not related to the characteristics of the populations in need. This was the case when, following the August 2008 conflict in the Tskhinvali Region/South Ossetia, no United Nations humanitarian actors had access to the area because the parties to the conflict sought to underline their respective claims to the territory by blocking the humanitarian access routes allowed by the respective opposing side.[10]

62. In situations of armed conflict, humanitarian access is often denied by authorities for other reasons as well. They may be unable to provide security to humanitarian organizations in territories that are not under their full control or may fear that humanitarian goods will be diverted by non-State armed groups for military purposes. Even where access exists, the independence of humanitarian actors may be jeopardized as a result of integrated strategies that combine military, political, development and humanitarian interventions in order to win the "hearts and minds" of the population.

63. A third and related trend is the increased violence against humanitarian workers and operations. One study found that the number of kidnappings of humanitarian personnel more than tripled between 2006 and 2009 alone.[11] Few of the perpetrators are ever brought to justice. Moreover, while violence against humanitarians may, in part, be simply a consequence of the general insecurity in weak or failed States, where most conflicts and some of the largest disaster-related humanitarian crises occur, politically motivated attacks are also on the rise.[12]

64. In theatres of asymmetric conflict such as Afghanistan, Iraq and Somalia, humanitarians have become targets of armed non-State groups that perceive them as contributing to military and political efforts to strengthen the respective Governments. As a result, they sometimes become a strategic target in the eyes of anyone intent on destabilizing the country. This deliberate targeting also affects ordinary crime, since humanitarians are no longer perceived as persons enjoying special protection but rather lucrative targets. In Somalia, for example, the Representative learned that kidnappings of humanitarian workers were often perpetrated by gangs of ordinary criminals who then demanded ransom or, failing payment, sold their victims through intermediaries to armed groups with a political agenda. In Chad, lawlessness in certain areas of the country has become the main obstacle to humanitarian access. In other situations, politically motivated public

[10] See A/HRC/13/21/Add.3, paras. 33 to 36. It remains to be seen whether the amendments to the Georgian "Law on the Occupied Territories" will resolve these concerns in practice. See A/64/819, para. 26.

[11] Abby Stoddard, Adele Harmer and Victoria DiDomenico. "Providing Aid in Insecure Environments: 2009 update. Trends in violence against aid workers and the operational response", Humanitarian Policy Group Policy Brief No. 34 (London, Overseas Development Institute, 2009). See also S/2009/277, annex, para. 31.

[12] Ibid. The same Overseas Development Institute study found that the percentage of politically motivated attacks rose from 29 per cent in 2003 to 49 per cent in 2008.

statements by political leaders that vilify humanitarian actors make them more vulnerable.

65. General situations of insecurity create yet another serious dilemma for humanitarian actors. They may have to rely on international military actors such as peacekeeping missions to secure humanitarian corridors or guard convoys and installations. However, if such troops have a non-neutral mandate or are perceived as supporting a particular side in the conflict, the humanitarian organizations they protect may be viewed as being too closely associated with them, thus undermining the neutral and impartial profile that forms the basis of their work and traditionally protected them from violence. The dilemma is exacerbated when no military forces under international command are available, and humanitarian actors must rely on Government forces or private security companies, which typically are not detached from local political dynamics, to physically protect them. This is currently the case in virtually all of Somalia, and may become the case in Chad and the Democratic Republic of the Congo, should the blue helmet troops eventually be withdrawn.

66. In the most difficult security environments, international humanitarian actors are increasingly forced to move to a form of remote management from outside the crisis area. This type of remote assistance places greater responsibility on national staff and local implementing partners and puts them at greater risk.[13] While this approach may work for short periods, it presents concerns in the long term with regard to quality, effectiveness and accountability issues (see S/2009/277, annex, para. 39).

B. The obligation to ensure the provision of humanitarian assistance

67. These worrying developments must be seen against the backdrop of obligations to ensure the provision of humanitarian assistance to internally displaced persons. The point of departure for any discussion on these obligations should be the recognition that human rights place a duty on States to take positive measures to fulfil these rights.[14] Economic and social rights and, in particular, the right to an adequate standard of living, which includes adequate food, clothing, housing and the right to health and education, entail minimum core obligations that States must ensure.

68. The Committee on Economic and Social Rights has taken the view "that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the [International] Covenant [on Economic, Social and Cultural

[13] According to information received by the Office for the Coordination of Humanitarian Affairs, in 2009, approximately 65 per cent of victims of the most serious attacks on humanitarian workers were national staff; in 2008, it was 80 per cent.

[14] Human Rights Committee General Comment No. 31: The nature of the general legal obligation imposed on States parties to the Covenant, paras. 6 to 8. For a specific example, see Human Rights Committee General Comment No. 6: The right to life, para. 5 (obligation to adopt such positive measures as eliminating malnutrition and epidemics).

Rights]".[15] In other words, the core minimum requirements extend to the very goods and services that are the subject of humanitarian assistance.

69. In order to fulfil these obligations, the State must take the necessary measures "individually and through international assistance and cooperation [...] to the maximum of its available resources".[16] A State is deemed to have violated the right to an adequate standard of living, to health and to education, if authorities knew or should have known about the humanitarian needs but failed to take measures to satisfy, at the very least, the most basic standards imposed by these rights. State obligations thus include the responsibility to follow up on these situations of concern and assess relevant needs in good faith, and ensure that humanitarian needs are being met, by the State itself or through available assistance by national or international humanitarian agencies and organizations,[17] to the fullest extent possible under the circumstances and with the least possible delay. The Representative considers that, in situations of internal displacement, requests for humanitarian assistance create a prima facie case that such assistance is needed, which is to be followed by impartial and participatory assessments to determine the nature and extent of the needs.

70. Moreover, humanitarian assistance must be adequate. According to the Committee on Economic, Social and Cultural Rights, "adequacy" in this context means that humanitarian goods and services are available to the affected population in sufficient quantity and quality; they are accessible, meaning that they are granted to all in need without discrimination and are within safe and easy reach of everyone, including vulnerable and marginalized groups; they are acceptable, in that they are culturally appropriate and sensitive to gender and age; and they are adaptable, namely, they are provided in ways that are flexible enough to adapt to the changing needs of beneficiaries.[18]

71. A number of States have recognized and specified their responsibilities in national laws, policies, administrative instructions and military manuals. The Law of the Republic of Indonesia No. 24 of 2007 Concerning Disaster Management, for example, provides that "Every person affected by a disaster is entitled to assistance fulfilling basic needs".[19] Similarly, the Japanese Disaster Relief Act sets out in great detail what humanitarian assistance prefectural governors must provide.[20]

72. The duty to ensure humanitarian assistance to internally displaced persons is also recognized in the Kampala Convention, which requires States to provide them "to the fullest extent practicable and with the least possible delay, with adequate humanitarian assistance, which shall include food, water, shelter, medical care and

---

[15] Committee on Economic, Social and Cultural Rights General Comment No. 3: The nature of States parties' obligations, para. 10.

[16] Article 2, para. 1, of the International Covenant on Economic, Social and Cultural Rights.

[17] See Guiding Principles 3 and 25, para. 1. For an analysis of the legal foundations, see Walter Kälin, *Guiding Principles on Internal Displacement: Annotations* (revised edition) (Washington, D.C., The American Society of International Law, 2008).

[18] See Committee on Economic, Social and Cultural Rights General Comment No. 4: The right to adequate housing (art. 11 (1) of the Covenant), para. 8, and General Comment No. 12: The right to adequate food (art. 11), paras. 7 to 13.

[19] Law of the Republic of Indonesia No. 24 of 2007 Concerning Disaster Management, articles 1, para. 1, and 26, para. 2.

[20] Disaster Relief Act of 1947 (Law No. 108), as amended on 25 December 1984, article 23.

other health services, sanitation, education, and any other necessary social services, and where appropriate, extend such assistance to local and host communities".[21]

73. In the context of natural disasters, this obligation has been recognized by the General Assembly, which unanimously resolved that "Each State has the responsibility first and foremost to take care of the victims of natural disasters and other emergencies occurring on its territory. Hence the affected State has the primary role in the initiation, organization, coordination and implementation of humanitarian assistance within its territory."[22]

74. States must plan for the necessary resources to provide humanitarian assistance.[23] A number of countries, such as Costa Rica and Madagascar, require all national authorities to earmark budget lines for disaster preparedness and response activities. Ethiopia established the National Disaster Prevention and Preparedness Fund, as well as the Emergency Food Security Reserve.[2] In order to fulfil their responsibilities to ensure the survival and basic welfare of their population, Governments can, and should, also draw on the complementary capacities of such local actors as the national Red Cross or Red Crescent societies and of international humanitarian actors.

75. In conflict situations, international humanitarian law sets out additional obligations to provide humanitarian assistance. Parties causing displacement in international or non-international conflict (for example, by clearing an area for military operations) must take all possible measures to ensure that evacuated civilians are provided with satisfactory conditions of shelter, hygiene, health, safety and nutrition.[24] People living in occupied territories, wounded and sick persons, and children, also benefit from specific guarantees of humanitarian assistance.[25] These international humanitarian norms do not eclipse, but rather complement human rights law, which continues to apply in situations of armed conflict and occupation.[26] Both bodies of law are to be interpreted as reinforcing each other so as to provide the greatest possible scope of protection for the individual.

---

[21] Article 9, para. 2 (b). See also article 23 of the African Charter on the Rights and Welfare of the Child.

[22] See General Assembly resolutions 46/182, annex, para. 4, and 43/131.

[23] See General Assembly resolution 62/153, para. 12; the Kampala Convention, article 3, para. 2 (d); and the ASEAN Agreement on Disaster Management and Emergency Response, article 10, para. 1.

[24] International Committee of the Red Cross, *Customary International Humanitarian Law: Vol. I: Rules* (Cambridge, Cambridge University Press, 2005), rule 131. See also the Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), article 49.

[25] See the Fourth Geneva Convention, articles 55 and 56; the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflict (Additional Protocol I), article 69; the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-international Armed Conflict (Additional Protocol II), articles 4, para. 3, and 7, para. 2.

[26] See International Court of Justice, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion of 9 July 2004), para. 106.

C. The obligation not to arbitrarily withhold consent

76. In a number of contexts, especially in large-scale or protracted crises, locally available resources may be insufficient and the authorities and local actors may be overwhelmed in meeting humanitarian assistance and protection needs. In such cases, States need to rely on complementary external resources to fulfil their duty to ensure the provision of all necessary humanitarian assistance.

77. While the General Assembly has noted that humanitarian assistance "should be provided with the consent of the affected country",[27] this does not imply that States are entitled to withhold their consent in all circumstances. As seen above, article 2, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights specifically requires States parties to take steps towards realizing human rights also "through international assistance and cooperation". There is growing acceptance that the obligation to respect, protect and fulfil human rights includes an obligation to invite, accept and facilitate international humanitarian assistance, in particular if the State is unable or unwilling to effectively address all humanitarian needs.[28]

78. The Kampala Convention, for example, requires national authorities to request international assistance when available resources are inadequate to protect and assist internally displaced persons.[29] The Great Lakes Protocol obliges States to "facilitate rapid and unimpeded humanitarian access and assistance to internally displaced persons" (article 3, para. 6). Colombia's law on internally displaced persons specifically recognizes the rights of the displaced to assistance and a corresponding right of the international community to provide humanitarian assistance.[30]

79. Guiding Principle 25, paragraph 2, stipulates that:

> "International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance."

80. According to this Principle, which reflects the position of the Security Council, the General Assembly and regional organizations,[31] States must exercise their sovereign rights in good faith and in line with the responsibilities sovereignty entails, including the human rights obligation to ensure the provision of necessary

---

[27] See General Assembly resolution 46/182, annex, Guiding Principle 3.

[28] See the Report of the Secretary-General A/64/819, para. 24; and Committee on Economic, Social and Cultural Rights General Comment No. 12: The right to adequate food (art. 11), para. 6.

[29] See the Kampala Convention, article 5, para. 6; the Great Lakes Protocol, article 3, para. 10; and Republic of Peru, Law No. 28232 concerning internal displacements (2005), article 4, para. 2.

[30] Republic of Colombia, Law No. 387 (1997), article 2, para. 1.

[31] See Security Council resolution 1894 (2009), which notes with concern "the severity of constraints on humanitarian access" and stresses "the importance for all parties to armed conflict to cooperate with humanitarian personnel in order to allow and facilitate access" to affected civilian populations. See also Security Council resolutions 688 (1991), 706 (1991), 822 (1993), 853 (1993) and 874 (1993), and others calling for unimpeded humanitarian access in specific conflict situations, and General Assembly resolutions A/60/L.1, para. 169, and 62/153, para. 15. For further analysis see Walter Kälin, *Guiding Principles on Internal Displacement: Annotations* (revised edition) (Washington, D.C., The American Society of International Law, 2008).

humanitarian assistance. Similarly, according to customary international humanitarian law applicable in situations of international as well as non-international armed conflicts, parties to a conflict "must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control".[32]

81. States can exclude assistance offered by actors who refuse or grossly fail to respect the humanitarian principles of humanity, impartiality and neutrality,[33] as well as operational independence,[34] when carrying out humanitarian assistance.[35] Furthermore, in situations of armed conflict, States are allowed to temporarily restrict the freedom of movement of authorized humanitarian relief personnel in case of imperative military necessity.[36]

82. However, States fail to respect their obligations if they reject assistance offered without providing any reasons or if the reasons are based on errors in fact (for example, a denial of humanitarian needs without a proper assessment). States also act arbitrarily if they deny access for reasons that are not in line with their international obligations, for example, if a State rejects assistance offered in line with the humanitarian principles of humanity, impartiality, neutrality and independence despite being unable to ensure the necessary assistance through other resources.[37]

83. States must refrain from selectively denying consent to offers of humanitarian assistance with the intent or effect of discriminating against a particular group or section of the population. In the case of internally displaced persons in need, the Guiding Principles stipulate against such discrimination on the basis, inter alia, of race, sex, legal status, religious belief, political or other opinion, or ethnic or social origin (see Guiding Principle 4, para. 1). An example would be a Government that systematically rejects offers of humanitarian assistance to crisis-affected regions populated by ethnic groups perceived as favouring the political opposition.

84. In some circumstances, international humanitarian law stipulates further-reaching obligations to grant humanitarian access. Occupying powers must agree to relief schemes and do not have the right to block genuine humanitarian assistance if the occupied territory or a part thereof is inadequately supplied.[38]

85. Similarly, insurgents, de facto authorities and other non-State actors controlling a part of the territory may not withhold consent to the provision of

---

[32] International Committee of the Red Cross, *Customary International Humanitarian Law. Vol. I: Rules* (Cambridge, Cambridge University Press, 2005), rule 55.

[33] See the definition of these humanitarian principles in General Assembly resolution 46/182.

[34] See General Assembly resolution 58/114, fifth preambular paragraph.

[35] See Guiding Principle 24, para. 1. In order to preserve the perception of their impartiality, many humanitarian actors also insist on their neutrality and independence from any State or other potentially non-neutral actor.

[36] *Customary International Humanitarian Law: Vol. I: Rules*, rule 56.

[37] For this reason, the Representative expressed concern regarding the expulsion of 13 major international humanitarian organizations operating in the Darfur region of the Sudan. See the Representative's press release of 13 March 2009, entitled "World is neglecting major internal displacement crises", available from http://www.ohchr.org/EN/NewsEvents/Pages/Media.aspx?NewsID=8508&LangID=E.

[38] Fourth Geneva Convention, article 59, fourth paragraph.

humanitarian assistance on the basis that they do not have sovereign rights regarding the territory to which the assistance is destined.[39] Article 7, paragraph 5 (g) of the Kampala Convention therefore specifically prohibits armed groups from "impeding humanitarian assistance and passage of all relief consignments, equipment and personnel to internally displaced persons".

D. The obligation to coordinate and not to impede or divert humanitarian assistance

86. The right of internally displaced persons to request and receive assistance, together with the responsibilities emerging from sovereignty, places a duty on States to coordinate humanitarian assistance, both within State structures and between the State and the providers of complementary local or external humanitarian assistance.[40] Many countries have set up special offices for this purpose, the most effective being those located in a central position, such as the Prime Minister's Office.[41]

87. At the same time, national authorities and, within the ambit of international humanitarian law, non-State parties to conflict, must grant and facilitate the free passage of humanitarian assistance and grant persons providing such assistance rapid and unimpeded access to the internally displaced.[42] This is related to the obligation not to divert humanitarian assistance for political or military reasons (Guiding Principle 24, para. 2). The duty not to impede access is relevant to external assistance accepted by the State, local authorities and humanitarian assistance provided by the State itself (for example, where there are disagreements between State humanitarian and security agencies).

88. There is a strain between the need to coordinate humanitarian assistance and unnecessarily impeding such assistance or inadvertently aggravating the crisis. Disputes may erupt over the extent of humanitarian needs and the nature, quantity and quality of humanitarian assistance required to address them. Joint needs assessments involving recipients, donors and the authorities will provide relevant data on what is appropriate and necessary. The consultation and involvement of recipient rights-holders in the provision of assistance should be broad and inclusive to prevent discrimination and ensure that certain individuals do not set themselves up as "gatekeepers" for humanitarian assistance.

89. Flexibility, multi-stakeholder dialogue and willingness to come to pragmatic compromises can significantly help to address tensions. For example, some months after the earthquake of 12 January 2010, the Government of Haiti asked to phase out

---

[39] Article 18, para. 2, of Additional Protocol II refers only to the consent of the "High Contracting Party", namely State consent.

[40] See the Kampala Convention, article 2 (d); the Great Lakes Protocol, article 3, para. 2; and the Inter-American Convention to Facilitate Disaster Relief, article IV.

[41] For examples, see *Protecting Internally Displaced Persons: A Manual for Law and Policymakers*, note 2 above.

[42] Guiding Principle 25, para. 3. See also the Kampala Convention, articles 3, para. 1 (g), and 7, para. 5 (g); Additional Protocol I to the 1949 Geneva Conventions, article 70, para. 2; and *Customary International Humanitarian Law, Vol. I: Rules* (see note 32 above), rule 55. This obligation has also formed the basis for numerous binding Security Council resolutions such as resolution 1910 (2010), para. 17.

the blanket distribution of free food aid, fearing that it might exacerbate recipient dependency and undermine local markets. Accordingly, the United Nations and other major providers of humanitarian assistance agreed to adapt their approach, including by providing recipient rights-holders with cash or food in exchange for community work (for example, rubble removal), while still maintaining targeted free food aid programmes for the most vulnerable.

90. In other instances, States fail to adapt regulatory regimes designed for normal times to crisis situations. People suffer as humanitarian goods remain stuck in port, awaiting customs or technical clearance. The arrival of essential personnel may be unduly delayed, owing to rigid visa requirements. Legislative foresight and written agreements between national authorities and humanitarian actors can enable the coordination of humanitarian assistance, without unnecessarily impeding assistance. Guatemalan law, for example, provides for the establishment of ad hoc disaster mobile teams composed of representatives from various ministries and Government departments, who are accorded authority over the entry of persons, goods and equipment, to ensure the speedy processing of international humanitarian assistance.[2] Joint communiqués between the United Nations and the Government of the Sudan, agreed in 2004 and 2007, also sought to establish fast-track procedures, although inexplicable delays and obstacles in the implementation of these agreements have occurred.[43]

91. The Representative is concerned about instances of States imposing taxes and customs duties on international humanitarian assistance. He underlines that this assistance in fact saves the State considerable funds, as it contributes to fulfilling the State's own obligation to ensure humanitarian assistance. Moreover, given that global humanitarian resources are limited and are never sufficient to match all needs, taxes and duties levied on humanitarian assistance by one State effectively deplete the resources required to provide life-saving assistance to persons in need in other States. Humanitarian assistance should be exempt from taxes or duties directly associated with relief and assistance towards initial recovery, including value-added tax and customs duties.[44]

E. The obligation to protect persons engaged in humanitarian assistance, their transport and supplies

92. National authorities and, within the ambit of international humanitarian law, armed groups, have a duty to respect and protect humanitarian assistance and actors.[45] This includes the obligation to take all necessary and reasonable measures against attacks and other acts of violence, including by diligently investigating and prosecuting perpetrators.

---

[43] See S/2009/277, annex, para. 10, and S/2010/213, para. 71.

[44] See "Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance" (IFRC document No. 301C/07/R4 annex), adopted 30 November 2007, at the thirtieth International Conference of the Red Cross and Red Crescent Movement (see IFRC document No. 301C/07/R4), Guidelines 17 and 21.

[45] See Guiding Principle 26; the Convention on the Safety of United Nations and Associated Personnel, article 7, para 1; *Customary International Humanitarian Law. Vol. I: Rules* (see note 32 above), rules 31 and 32; and the Great Lakes Protocol, article 3, para. 7.

93. The line between reasonable measures to protect humanitarian operations and unreasonable impediments to humanitarian action can sometimes be thin. Moreover, some States deliberately impose access restrictions in order to manipulate assistance flows and keep out inconvenient humanitarian presence. The Representative considers that security restrictions must have a rational basis and be subject to review. Moreover, national authorities and other actors imposing restrictions should engage in dialogue with humanitarian actors to determine which measures would be the least disruptive to humanitarian operations, while still providing an acceptable degree of security. The Representative also reiterates the continued importance of the humanitarian principles of humanity, impartiality, neutrality and independence, in order to gain the acceptance of all parties to a conflict, as well as their consent and assurances of safe passage.

IV. Conclusions and recommendations

94. **Internally displaced persons and others affected by armed conflict and disasters have a right to request[46] and receive humanitarian assistance. The State has a corresponding obligation to ensure all necessary humanitarian assistance. This entails specific duties, including the duty to plan, coordinate, protect and not impede humanitarian assistance, as well as a duty not to arbitrarily withhold consent to offered humanitarian assistance.**

95. **Increasing constraints on humanitarian access have the effect of excluding internally displaced persons and others affected by conflict and disasters from their entitlements to assistance. Administrative and technical barriers regularly impede the provision of humanitarian action. Humanitarian actors find it increasingly difficult to defend the impartiality, neutrality and independence that form the basis of their work, as individual States and State coalitions seek to align humanitarian action with their own political and military agendas, a trend considered responsible, in part, for the increasing violence against humanitarian workers. This increase in politically motivated attacks on humanitarian personnel and other patterns of insecurity that interrupt humanitarian operations have a profound impact on both the extent and methods for providing humanitarian assistance, with recipient rights-holders as the ultimate victims.**

96. **The Representative calls on all Member States to shape a rule-based framework to international humanitarian assistance, taking into account the Guiding Principles on Internal Displacement as well as the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance[47] and, in particular to:**

(a) **Explicitly recognize in relevant national laws, policies and administrative and military instructions, the right of internally displaced persons and others affected by conflict or disaster to request and receive humanitarian assistance, in an equal and non-discriminatory manner; and the corresponding obligation of the State to ensure assistance, including by**

[46] In the absence of a "request", State obligations also apply when State authorities knew or should have known that such humanitarian needs existed.

[47] These Guidelines were adopted at the thirtieth International Conference of the Red Cross and Red Crescent Movement, held in Geneva from 26 to 30 November 2007.

facilitating international assistance, especially where locally available resources are insufficient;

(b) Not arbitrarily withhold consent to offered humanitarian assistance; and to grant rapid and unimpeded access to all accepted humanitarian assistance;

(c) Inform the public about the valuable role of humanitarian actors in alleviating human suffering, and resolve disputes through pragmatic dialogue;

(d) Set up dedicated national humanitarian coordination structures, preferably in a central position of government. Coordination structures should be subject to auditing and non-executive civilian oversight and, at least in conflict situations, should be institutionally separate from the military and security apparatus. Clear powers and responsibilities to provide humanitarian assistance, as well as the necessary resources, should be provided to relevant authorities at the national and local levels;

(e) Establish clear procedures and criteria for assessing humanitarian needs and determining the required international assistance. Assessments should be based on international standards such as the Sphere standards and use a participatory methodology involving the authorities, donors, affected persons and communities, and vulnerable groups in particular;

(f) Set out effective monitoring, quality control and complaint mechanisms to verify and guide the provision of humanitarian assistance, and allow independent monitoring;

(g) Establish facilitated procedures for emergency situations, including with regard to domestic registration and legal personality for international actors; visa and entry procedures for international personnel and customs; and technical clearance procedures for humanitarian aid and equipment. Abolish remaining fees and taxes on humanitarian assistance;

(h) End impunity for attacks on humanitarian workers and operations by diligently investigating and prosecuting the perpetrators in national courts and, where relevant, cooperating with the International Criminal Court. Take appropriate disciplinary and criminal measures against officials who obstruct or divert humanitarian assistance;

(i) Respect humanitarian principles in the pursuance of their security and foreign policies; ensure a robust, principled and coordinated diplomatic response in situations where States arbitrarily deny or impede humanitarian access; and fund humanitarian assistance based on need and in line with the Principles and Good Practice of Humanitarian Donorship;

(j) Foster efforts to develop a rule- and rights-based international framework on humanitarian assistance.

97. The Representative calls on humanitarian organizations and agencies to regularly review their own compliance with humanitarian principles; resist accepting conditions that would compromise, or be perceived as compromising, the principles of humanity, neutrality, impartiality and the independence of their operations; and reinforce their efforts to ensure that recipient rights-holders are fully involved in the planning, implementation and evaluation of humanitarian assistance.